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# federal register

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 551

### Pay Administration Under the Fair Labor Standards Act

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is adopting an interim rule as a final rule to comply with a recent decision of the U.S. Court of Appeals for the Federal Circuit concerning the computation of overtime pay for Federal employees under the Fair Labor Standards Act of 1938, as amended.

**EFFECTIVE DATE:** August 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** James E. Matteson, (202) 632-5056.

**SUPPLEMENTARY INFORMATION:** On December 16, 1987, an interim rule with request for comments was published in the **Federal Register** (52 FR 47687) by the Office of Personnel Management to comply with a decision by the U.S. Court of Appeals for the Federal Circuit in the matter of *Chester Lanehart, et al.* v. *Constance Horner, et al.* 818 F. 2d 1574 (Fed. Cir. 1987). The comment period ended on February 16, 1988.

The Office of Personnel Management received comments from two agencies. One agency urged OPM to limit its application of *Lanehart* to Federal firefighters or, in the alternative, to define the term "regular and recurring overtime." The other agency urged OPM to define "regularly scheduled overtime work" in such a way as to require that such work be regular and recurring in nature.

We do not believe it would be prudent to limit the applicability of *Lanehart* to Federal firefighters because the decision of the Court of Appeals for the Federal Circuit makes it clear that the same rationale would apply in the case of any Federal employee who receives additional compensation for overtime work on a "customary and regular" basis. In addition, we do not believe it is necessary or desirable to revise the definition of "regularly scheduled" work in 5 CFR 550.103(p) and 610.102(g) to give effect to the changes required by *Lanehart*. The suggested change would increase agencies' administrative burdens by requiring them to ascertain, in each case, not only whether overtime work was scheduled in advance of the administrative workweek, but also whether the overtime work was "regular and recurring" in nature.

#### E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

#### Regulatory Flexibility Act

I certify that this rule will not have a significant impact on a substantial number of small entities because it will affect only Federal employees and agencies.

#### List of Subjects in 5 CFR Part 551

Administrative practice and procedure, Fair Labor Standards Act, Government employees, Manpower training programs, Travel, Wages.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is adopting the interim rule amending 5 CFR Part 551, published in the **Federal Register** (52 FR 47687, December 16, 1987) as a final rule without change.

[FR Doc. 88-16218 Filed 7-18-88; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Agricultural Stabilization and Conservation Service

### 7 CFR Part 735

**[Amdt. No. 2]**

### Cotton Warehouses; Definitions, Financial Statement, Bonding and Net Asset Requirements, Warehouse Bonds and Transfer of Stored Cotton

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this rule is to amend the regulations at 7 CFR Part 735 relating to cotton warehouses licensed or applying for license under provisions of the United States Warehouse Act to: (1) Add definitions; (2) establish financial statement requirements; (3) increase the total bonding and net asset requirements; (4) require warehousemen to have and maintain total current assets equal to or exceeding total current liabilities; (5) allow the Secretary to accept a letter of credit for a deficiency in total net assets above the minimum requirement; (6) permit a warehouseman to deposit, with the Secretary, for the protection of depositors, United States public debt obligations as security in lieu of a bond furnished by a corporate surety; (7) allow a waiver of the requirements for an individual financial statement from a warehouseman wholly-owned by another business entity if the other entity is willing to furnish an acceptable financial statement and guarantee the storage obligations of the licensed warehouseman; (8) allow the inclusion of certain appraisals of real and personal property in the determination of assets; (9) provide for the acceptance of a continuous form of bond from a surety company; and (10) permit the transfer of receipted cotton from one licensed warehouse to another licensed warehouse. These changes are being made to provide better protection for depositors.

**EFFECTIVE DATE:** September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Clifford J. McNeill, (202) 475-4028.

**SUPPLEMENTARY INFORMATION:**

#### Rulemaking Matters

This final rule has been reviewed in conformity with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "non major." This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is June 1, 1993.

Milton J. Hertz, Administrator, Agricultural Stabilization and Conservation Service (ASCS), has determined that this action is not a major rule since implementation will not

result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographic region; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements in this rule have been approved by the Office of Management and Budget under OMB No. 0560–0120 in accordance with the Paperwork Reduction Act of 1980.

Milton J. Hertz, Administrator, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities because: (1) This action imposes only moderate economic costs on small entities; and (2) the use of the service is voluntary. Therefore, no regulatory flexibility analysis was prepared.

This rule is not expected to have any significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Accordingly, neither an environmental assessment nor an environmental impact statement is required, and none was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12291 (February 17, 1981) was not used to assure that units of local government are informed of this action.

**Background**

The U.S. Warehouse Act (7 U.S.C. 241 *et seq.*) (the "Act") provides that warehousemen who apply to the Secretary of Agriculture and who meet certain statutory and regulatory standards may be federally licensed. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title, thereby facilitating trading of agricultural commodities in interstate commerce; and (3) set and maintain a standard for sound warehouse operations.

The Department of Agriculture has sought to attain these objectives by research and development of basic standards for good warehousing practices; requiring original and continuing examinations of applicants and licensees; establishing financial and bonding requirements; and establishing licensing and regulatory requirements. Rules and regulations have been promulgated by the Department from time to time under authority of 7 U.S.C. 268.

Changes in the economy, governmental administrative policy, the cotton warehousing industry, and needs of cotton warehousemen have necessitated continuous departmental review of operations and requirements under the Act. A notice of proposed rulemaking was published by the Department on Friday, December 11, 1987, in the **Federal Register** at 52 FR 37125, requesting comments with respect to several proposed changes in the regulations for cotton warehouses. The comment period ended on January 11, 1988.

Amendments were proposed which would (1) add definitions, (2) require an audit or review level financial statement, (3) increase the total bonding and net asset requirement, (4) permit acceptance of letters of credit for a deficiency in net assets above the minimum required, (5) accept deposit of United States public debt obligations in lieu of surety bond, (6) accept financial statement of a parent entity for a wholly owned subsidiary under certain conditions, (7) accept appraisals of land, buildings, and equipment under specified conditions, (8) provide for a continuous bond and license, and (9) permit the transfer of receipted cotton from one licensed warehouse to another licensed warehouse.

Comments were received from two entities. One comment was from a large multi-state cotton warehouseman and consisted of a telephone call followed by a written comment. This comment mainly dealt with clarification. In reviewing the proposed rule it was determined that clarification was needed on the net asset requirement by States. This subsection has been revised. The comment also suggested a minor change in the bond language. The other comment was from a trade association suggesting a change in the bond language to eliminate possible confusion with respect to the surety's maximum limit of liability. Therefore, the bond language has been revised to incorporate the suggested changes from both comments.

**List of Subjects in 7 CFR Part 735**

Definitions, Warehouse licenses, Financial requirements, Warehouse bonds.

**Final Rule**

Accordingly 7 CFR Part 735 is amended as follows:

## PART 735—COTTON WAREHOUSES

1. The authority citation for 7 CFR Part 735 continues to read as follows:

**Authority:** 7 U.S.C. 268.

2. Section 735.2 is amended by adding paragraph (x), (y), (z), and (aa) as follows:

**§ 735.2 Terms defined.**

* * * * *

(x) *Net Assets.* The difference remaining when liabilities are subtracted from allowable assets. In determining allowable assets, credit may be given for appraisal of real property less improvements and for the appraisal of insurable property such as buildings, machinery, equipment, and merchandise inventory only to the extent that such property is protected by insurance against loss or damage by fire, lightning, and tornado. Such insurance must be in the form of lawful insurance policies issued by insurance companies authorized to do such business and subject to service of process in the State in which the warehouse is located. The Secretary shall, at his discretion, determine what assets are allowable and under what conditions appraisals may be used.

(y) *Warehouse Capacity.* Warehouse capacity is the maximum number of bales of cotton that the warehouse will accommodate when stored in the manner customary to the warehouse and as required by the Secretary.

(z) *Current Assets.* Assets, including cash, that are reasonably expected to be realized in cash or sold or consumed during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

(aa) *Current Liabilities.* Those financial obligations which are expected to be satisfied during the normal operating cycle of the business or within one year if the operating cycle is shorter than one year.

**§ 735.4 [Amended]**

3. Section 735.4 is amended by changing "$10,000.00" to "$25,000."

4. Section 735.5 is revised to read as follows:

**§ 735.5 Financial requirements.**

(a) Each warehouseman conducting a warehouse licensed under the Act or for which application for a license under the Act has been made must maintain complete, accurate, and current financial records which shall be available to the Secretary for review or audit at the Secretary's request.

(b) Each warehouseman conducting a warehouse for which application for

license under the Act is made shall provide with the application and each licensed warehouseman: shall annually, or more frequently if required, furnish to the Secretary, financial statements from the records required in paragraph (a) of this section, prepared according to generally accepted accounting principles. Such statements shall include but not be limited to: (1) Balance sheet, (2) statement of income (profit and loss), (3) statement of retained earnings, and (4) statement of changes in financial position. The chief executive officer for the warehouseman shall certify under penalty of perjury that the statements, as prepared, accurately reflect the financial condition of the warehouseman as of the date designated and fairly represent the results of operations for the period designated.

(c) Each warehouseman conducting a warehouse licensed under these regulations shall have the financial statements required in paragraph (b) of this section audited or reviewed by an independent public accountant. The Secretary may, at his discretion, require an audited financial statement prepared by an independent certified public accountant. He may also, at his discretion, require an on-site examination and an audit by USDA personnel. Audits and reviews by independent certified public accountants and independent public accountants specified in this section must be made in accordance with standards established by the American Institute of Certified Public Accountants. The accountant's certification, assurances, opinion, comments, and notes on such statements, if any, must be furnished along with the financial statements. Licensees who cannot immediately meet these requirements may apply to the Secretary for a temporary waiver of this provision. The Secretary may grant such waiver for a period not to exceed 180 days if the licensee can furnish evidence of good and substantial reasons therefor.

(d) Each warehouseman conducting a warehouse which is licensed under this part, or for which application for such a license has been made, must have and maintain:

(1) Total net assets liable and available for the payment of any indebtedness arising from the conduct of the warehouse of at least the amount obtained by multiplying $10.00 by the warehouse capacity in bales to a maximum of $250,000 in each State; however, no person may be licensed or remain licensed as a warehouseman under this part unless that person has allowable net assets of at least $25,000 in each State, (Any deficiency in net assets above the $25,000 minimum may be supplied by an increase in the amount of the warehouseman's bond in accordance with § 735.12(c) of this part); and

(2) Total current assets equal to or exceeding total current liabilities or evidence acceptable to the Secretary that funds will be and remain available to meet current obligations.

(e) If a warehouseman is licensed or is applying for licenses to operate two or more warehouses under this part, the maximum number of bales which all such warehouses will accommodate when stored in the manner customary to the warehouses, as determined by the Secretary, shall be considered in determining whether the warehouseman meets the net asset requirements specified in paragraph (d) of this section.

(f) Subject to such terms and conditions as the Secretary may prescribe and for the purposes of determining allowable assets and liabilities under paragraphs (d) and (e) of this section:

(1) Capital stock will not be considered a liability;

(2) Appraisals of the value of fixed assets in excess of the book value claimed in the financial statement submitted by a warehouseman to conform with paragraphs (b) and (c) of this section may be allowed if (i) prepared by independent appraisers acceptable to the Secretary and (ii) the assets are fully insured against casualty loss;

(3) Financial statements of a parent company which separately identifies the financial position of the warehouse as a wholly owned subsidiary and which meets the requirements of paragraphs (b), (c), and (d) of this section may be accepted by the Secretary in lieu of the warehouseman meeting such requirements; and

(4) Guaranty agreements from a parent company submitted on behalf of a wholly owned subsidiary may be accepted by the Secretary as meeting the requirements of paragraphs (b), (c), and (d) of this section, if the parent company submits a financial statement which qualifies under this section.

(g) If a State agency is licensed or applying for a license as provided in section 9 of the Act has funds of not less than $500,000 guaranteeing the performance of obligations of the agency as a warehouseman, such funds shall be considered sufficient to meet the net asset requirements of this section.

(h) If a warehouseman files a bond in the form of a certification of participation in an indemnity or insurance fund as provided for in § 735.11(b), the certification may only be used to satisfy any deficiencies in assets above $25,000.

(i) When a warehouseman files a bond in the form of either a deposit of public debt obligations of the United States or other obligations which are unconditionally guaranteed as to both interest and principal by the United States as provided for in § 735.11(c):

(1) The obligation deposited shall not be considered a part of the warehouseman's assets for purposes of § 735.5(d), (1) and (2);

(2) A deficiency in total allowable net and current assets as computed for § 735.5(d), (1) and (2) may be offset by the licensed warehouseman furnishing a corporate surety bond for the difference;

(3) The deposit may be replaced or continued in the required amount from year to year; and

(4) The deposit shall not be released until one year after termination (cancellation or revocation) of the license which it supports or until satisfaction of any claim against the deposit, whichever is later.

Nothing in these regulations shall prohibit a person other than the licensed warehouseman from furnishing such bond or additions thereto on behalf of and in the name of the licensed warehouseman subject to provisions of § 735.11(c).

**§ 735.7 [Amended]**

5. Section 735.7(a) is amended by changing "$10,000.00" to "$25,000."

6. Section 735.11 is revised to read as follows:

**§ 735.11 Bond required; time of filing.**

Each warehouseman applying for a warehouse license under the Act shall, before such license is granted, file with the Secretary or his designated representative a bond either:

(a) In the form of a bond containing the following conditions and such other terms as the Secretary or his designated representative may prescribe in the approved bond forms, with such changes as may be necessary to adapt the forms to the type of legal entity involved:

Now, therefore, if the said license(s) or any amendments thereto be granted and said principal, and its successors and assigns operating said warehouse(s), shall faithfully perform during the period of this bond all obligations of a licensed warehouseman under the terms of [the United States

Warehouse Act] and regulations thereunder relating to the above-named products.

Then this obligation shall be null and void and of no effect, otherwise to remain in full force. For purposes of this bond, the aforesaid obligations under the Act, regulations, and contracts include obligations under any and all modifications of the Act, the regulations, and the contracts that may hereafter be made, notice of which modifications to the surety being hereby waived.

This bond shall remain in force and effect for a minimum term of one year beginning with the effective date of this bond and thereafter shall be considered as a continuous bond, subject to termination as herein provided.

Regardless of the number of years this bond remains in force, or the number of premiums paid, and regardless of the number or amount of claims or claimants, in no event shall the aggregate liability of the surety under this bond exceed the amount of this bond.

This bond may be terminated at the end of the initial one year term by providing at least 120 days advance written notice of cancellation to the Secretary. This bond may be canceled at any time after the initial one year term beginning with the bond effective date by providing 120 days advance written notice of cancellation to the Secretary. If said notice is given by the surety, a copy of the notice shall be mailed on the same day to the principal. Cancellation of this bond shall not affect any liability that shall have accrued under this bond prior to the effective date of cancellation.

This bond shall be effective on and after _____.

A bond in this form shall be subject to 7 CFR 735.5 and 735.12 through 735.15, and 31 CFR Part 225; or

(b) In the form of a certificate of participation in and coverage by an indemnity or insurance fund as approved by the Secretary, established and maintained by a State, backed by the full faith and credit of the applicable State, and which guarantees depositors of the licensed warehouse full indemnification for the breach of any obligation of the licensed warehouseman under the terms of the Act and regulations. A certificate of participation and coverage in such fund shall be furnished to the Secretary annually. If administration or application of the fund shall change after being approved by the Secretary, the Secretary may revoke his approval. Such revocation shall not affect a depositor's rights which have arisen prior to such revocation. Upon such revocation the licensed warehouseman then must comply with paragraphs (a) or (c) of this section. Such certificate of participation shall not be subject to §§ 735.12 and 735.13; or

(c) In the form of a deposit with the Secretary as security, United States bonds, Treasury notes, or other public debt obligations of the United States or obligations which are unconditionally guaranteed as to both interest and principal by the United States, in a sum equal at their par value to the amount of the penal bond required to be furnished, together with an irrevocable power of attorney and agreement in the form prescribed, authorizing the Secretary to collect or sell, assign and transfer such bonds or notes so deposited in case of any default in the performance of any of the conditions or stipulations of such penal bond. Obligations posted in accordance with this paragraph may not be withdrawn by the warehouseman until one year after license termination or until satisfaction of any claims against the obligations whichever is later. A bond in this form shall be subject to 7 CFR 735.5 and 735.12 through 735.15, and 31 CFR Part 225.

7. Section 735.12 is revised to read as follows:

**§ 735.12 Amount of bond; additional amounts.**

(a) The amount of bond to be furnished by each warehouseman under the regulations in this part, shall be the rate of ten dollars ($10.00) per bale for the maximum number of bales that the warehouse accommodates when stored in the manner customary to the warehouse as determined by the Secretary, but not less than twenty thousand dollars ($20,000) nor more than two hundred fifty thousand dollars ($250,000); except as provided in paragraphs (b) and (c) of this section.

(b) In case a warehouseman is licensed or applying for licenses to operate two or more warehouses in the same State, he may give a single bond meeting the requirements of the Act and the regulations in this part to cover all his warehouses within the State and shall be deemed to be one warehouse only for purposes of determining the amount of bond required under paragraph (a) of this section.

(c) In case of a deficiency in net assets above the twenty-five thousand dollars ($25,000) minimum required by § 735.5(d)(1), there shall be added to the amount of bond determined in accordance with paragraph (a) of this section an amount equal to such deficiency or a letter of credit in the amount of the deficiency issued to the Secretary for a period of not less than two years to coincide with the period of any deposit of obligations under 7 CFR 735.11(c). Any letter of credit must be clean, irrevocable, issued by a commercial bank payable to the Secretary by sight draft and insured as a deposit by the Federal Deposit Insurance Corporation.

(d) If the Secretary, or his designated representative, finds that conditions exist which warrant requiring additional bond, there shall be added to the amount of bond as determined under the other provisions of this section, a further amount to meet such conditions.

8. Section 735.14 is revised to read as follows:

**§ 735.14 Bond required each year.**

A continuous form of license shall remain in force for more than one year from its effective date or any subsequent extension thereof, provided that the warehouseman has on file with the Secretary a bond meeting the terms and conditions as outlined in 7 CFR 735.11. Such bond must be in the amount required by the Secretary and approved by him or his designated representative. Failure to provide for or renew a bond shall result in immediate and automatic termination of the warehouseman's license.

9. Section 735.40 is revised to read as follows:

**§ 735.40 Excess Storage.**

(a) If at any time a warehouseman shall store cotton in his licensed warehouse in excess of the capacity thereof as determined in accordance with 7 CFR 735.12, such warehouseman shall so arrange the cotton as not to obstruct free access thereto and the proper operation of the sprinkler or other fire protection equipment provided for such warehouse, and shall immediately notify the Secretary of such excess storage, the reason therefor and the location thereof.

(b) A warehouseman who lacks space and desires to transfer at his own expense, identity preserved depositor stored cotton, for which receipts have been issued to another licensed warehouse may physically do so subject to the following terms and conditions:

(1) The transferring (shipping) warehouseman's accepted rules or schedule of charges must contain notice that the warehouseman may forward cotton deposited on an identity preserved bases with the written permission of the depositor under such terms and conditions as the Secretary may prescribe;

(2) For purposes of this section, a licensed warehouse means; (i) a warehouse operated by a warehouseman who holds an unsuspended, unrevoked license under the U.S. Warehouse Act for cotton; or (ii) a warehouse operated by a warehouseman who holds an effective warehouse license for the public storage of cotton issued by a State that has

financial, bonding and examination requirements for the benefit of all depositors at least equal to the requirements of this section;

(3) The transferring (shipping) warehouseman must list all forwarded bales on a Bill of Lading by receipt number and weight, in blocks not to exceed 200 bales. The receiving warehouse shall promptly issue a non-negotiable block receipt for each block attaching a copy of the corresponding Bill of Lading to each receipt and forward the receipt promptly to the transferring warehouseman (The receiving warehouseman will store each block intact, attach a header card showing the receipt number, number of bales and a copy of the Bill of Lading with the individual tag numbers. Such non-negotiable block receipts shall have printed or stamped in large bold outline letters diagonally across the face the words "NOT NEGOTIABLE." Receipts are not valid for collateral purposes. The non-negotiable receipt shall be retained by the shipping warehouseman to be presented to and used by Department examiners in lieu of an on-site inventory. The cotton covered by such receipts is not the property of either the receiving or shipping warehouseman but held in trust by both solely for the benefit of the depositors whose bailed cotton was transferred individually or collectively and the depositor or the depositor's transferee retains title thereto);

(4) The shipping warehouseman's bond shall be increased to consider the addition of the transferred cotton to the licensed capacity of the warehouse with the net asset requirements based on the total of the licensed capacity and the forwarded cotton (The bond amount need not be more than $250,000 unless necessary to cover a deficiency in net assets to meet requirements. The receiving warehouseman must not incur storage obligations that exceed the licensed capacity of the receiving warehouse);

(5) The shipping warehouseman continues to retain storage obligations to the owners of all cotton deposited in the warehouse for storage whether forwarded or retained and is, except as otherwise agreed upon under paragraph (b)(6) of this section, required to redeliver the cotton, upon demand, to the depositor or the depositor's transferee at the warehouse where the cotton was first deposited for storage;

(6) The owner of cotton deposited for storage at the warehouse must make settlement and take delivery at the warehouse where the cotton was first deposited for storage, unless the owner of the cotton, with the consent of both the shipping warehouseman and the receiving warehouseman, elects to take delivery at the warehouse to which cotton was transferred under this section;

(7) Nothing in this section diminishes the right of the owner of the cotton to receive or the obligation of the warehouseman of a licensed warehouse from which the product is transferred, to deliver to the owner the same cotton, identity preserved, called for by the warehouse receipt or other evidence of storage;

(8) Recording and retention of non-negotiable warehouse receipts received as a result of forwarding cotton under this section shall be subject to the requirements for warehouse receipts specified elsewhere in these regulations; and

(9) If it is the shipping warehouseman's obligation by terms of the warehouse receipt or otherwise to insure the cotton subject to the transfer, he must in accordance with 7 CFR 735.23 keep such cotton insured in his own name or transfer the cotton only to a warehouse where the cotton is fully insured.

10. Section 735.93 is added to read as follows.

**§ 735.93 OMB control number assigned pursuant to Paperwork Reduction Act.**

The information collection requirements contained in these regulations (7 CFR Part 735) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0560-0120.

Signed at Washington, DC, July 12, 1988.

**Milton Hertz,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 88-16001 Filed 7-18-88; 8:45 am]

BILLING CODE 3410-05-M

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## Agricultural Marketing Service

## 7 CFR Parts 916, 917, and 919

## Expenses and Assessment Rates for Specified Marketing Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule authorizes expenditures and establishes assessment rates under Marketing Order No.'s 916 and 917 (California nectarines, plums, and peaches) and 919 (Colorado peaches) for the 1988-89 fiscal year established for each order. The proposal in needed for the Nectarine Administrative Committee, the Plum and Peach Commodity Committees, and the Colorado Peach Administrative Committee to incur operating expenses during the 1988-89 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** March 1, 1988, through February 28, 1989 (§§ 916.227, 917.250 and 917.251), and July 1, 1988, through June 30, 1989 (§ 919.227).

**FOR FURTHER INFORMATION CONTACT:** Jerry N. Brown, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-5464.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No.'s 916 (7 CFR Part 916) regulating the handling of nectarines grown in California; 917 (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California; and 919 (7 CFR Part 919) regulating the handling of peaches grown in Mesa County, Colorado. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 650 handlers of California plums, peaches, and nectarines subject to regulation under marketing orders (7 CFR Parts 916, and 917), and there are approximately 2,030 producers of these commodities in the regulated area. There are approximately 28 handlers of Colorado peaches subject to regulation under a marketing order (7

CFR Part 919), and there are approximately 245 producers of peaches in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the U.S. Department of Agriculture for approval. The members of the committees are primarily handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Nectarine Administrative Committee met on May 5, 1988, and unanimously recommended 1988–89 marketing order expenditures of $3,123,908 and an assessment rate of $0.18 per No. 22D standard lug box (package) of fresh nectarines. For comparison, 1987–88 fiscal year budgeted expenditures were $2,844,417 and the assessment rate was $0.16 per package. Major expenditure categories in the 1988–89 budget are $1,801,886 for market development and $867,000 for inspection, with most of the remainder for program administration. Total income for 1988–89 is expected to amount to $3,173,900, including assessment income of $3,132,900 based on shipments of 17,405,000 packages of fresh nectarines, $20,000 from the California Department of Food and Agriculture, and $21,000 from other sources such as interest earned on the reserve fund. Committee reserves are within limits authorized under the program.

The Plum Commodity Committee met on May 4, 1988, and unanimously recommended 1988–89 marketing order expenditures of $3,510,878 and an assessment rate of $0.19 per No. 22D standard lug box (package) of fresh plums. For comparison, 1987–88 fiscal year budgeted expenditures were $3,125,626 and the assessment rate was $0.19 per package. Major expenditure categories in the 1988–89 budget are $1,971,459 for market development and $1,085,960 for inspection, with most of the remainder for program administration. Total income for 1988–89 is expected to amount to $3,508,030, including assessment income of $3,465,030 based on shipments of 18,237,000 packages of fresh plums, $20,000 from the California Department of Food and Agriculture, and $23,000 from other sources such as interest earned on the reserve fund. Additional estimated income includes $100,000 from the USDA's Foreign Agricultural Service for export matching funds. Reserves are within the maximum amounts authorized under the program.

The Peach Commodity Committee met on May 5, 1988, and recommended, by a 12–1 vote, 1988–89 marketing order expenditures of $2,562,089 and an assessment rate of $0.18 per No. 22D standard lug box (package) of fresh peaches. For comparison, 1987–88 fiscal year budgeted expenditures were $2,409,180 and the assessment rate was $0.16 per package. Major expenditure categories in the 1988–89 budget are $1,280,435 for market development and $896,000 for inspection, with most of the remainder for program administration. Total income for 1988–89 is expected to amount to $2,590,980, including assessment income of $2,553,480 based on shipments of 14,186,000 packages of fresh peaches, $20,000 from the California Department of Food and Agriculture, and $17,500 from other sources such as interest earned on the researve fund. Additional estimated income includes $20,000 from the USDA's Foreign Agricultural Service for export matching funds. Reserves are within the maximum amounts authorized under the program.

The Colorado Peach Administrative Committee met on May 23, 1988, and unanimously recommended 1988–89 marketing order expenditures of $1,830 and an assessment rate of $0.01 per bushel of fresh peaches. The Federal marketing order program is operated in conjunction with a State program. For comparison, 1987–88 fiscal year budgeted expenditures were $683. There was no assessment rate for the 1987–88 season because the committee wanted to reduce the Federal portion of the reserve account. The reserve was reduced to $30. Federal assessment income for 1988–89 is expected to amount to $1,800 based on shipments of 180,000 bushels of fresh peaches. Operating reserves are well within the amounts authorized under the program. The Federal program budget expenditures of $1,830 will be used to help pay the manager's salary.

While this section will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived form the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule regarding this action was issued on June 16, 1988, and published in the **Federal Register** (53 FR 232244, June 21, 1988). That document provided that interested persons could file comments through July 1, 1988. No comments were received.

Based on the foregoing, it is found that the specified expenses are reasonable and likely to be incurred, and that such expenses, assessment rates, and operating reserves will tend to effectuate the declared policy of the Act.

Approval of the expenses, assessment rates, and operating reserves should be expedited because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, the Secretary also finds that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553).

**List of Subjects in 7 CFR Parts 916, 917, and 919**

Marketing agreements and orders, Nectarines, Pears, Plums, Peaches (California), Peaches (Colordao).

For the reasons set forth in the preamble, new §§ 916.227, 917.250, 917.251, and 919.227 are added as follows:

1. The authority citation for 7 CFR Parts 916, 917, and 919 continues to read as follows:

**Authority:** Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New §§ 916.227, 917.250, 917.251, and 919.227 are added to read as follows:

**Note.**—These sections will not appear in the Code of Federal Regulations.

## PART 916—NECTARINES GROWN IN CALIFORNIA

**§ 916.227 Expenses and assessment rate.**

Expenses of $3,123,908 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.18 per No. 22D standard lug box of assessable nectarines is established, for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

## PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

**§ 917.250 Expenses and assessment rate.**

Expenses of $3,510,878 by the Plum Commodity Committee are authorized, and an assessment rate of $0.19 per No. 22D standard lug box of assessable peaches is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

**§ 917.251 Expenses and assessment rate.**

Expenses of $2,562,089 by the Peach Commodity Committee are authorized, and an assessment rate of $0.18 per No. 22D standard lug box of assessable plums is established for the fiscal period ending February 28, 1989. Unexpended funds may be carried over as a reserve.

## PART 919—PEACHES GROWN IN MESA COUNTY, COLORADO

**§ 919.227 Expenses and assessment rate.**

Expenses of $1,830 by the Administrative Committee are authorized, and an assessment rate of $0.01 per bushel of assessable peaches is established for the fiscal period ending June 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: July 14, 1988.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 88–16238 Filed 7–18–88; 8:45 am]

BILLING CODE 3410–02–M

## FEDERAL HOME LOAN BANK BOARD

**12 CFR Part 563**

**[No. 88–577]**

## Purchase and Sale of Freddie Mac Preferred Stock by Certain Insured Institutions

Date: July 13, 1988.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Temporary rule with request for comments.

**SUMMARY:** The Federal Home Loan Bank Board ("Board") as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") is adopting a temporary regulation addressing the purchase and sale of preferred stock of the Federal Home Loan Mortgage Corporation ("Freddie Mac") held by institutions insured by the FSLIC ("insured institutions") that do not currently meet their minimum regulatory capital requirements. The temporary regulation provides that no such institution may buy or sell such stock without obtaining prior approval from its Principal Supervisory Agent ("PSA") or his designee, subject to the concurrence of the Office of Regulatory Activities. It also sets forth general guidelines that the PSA will use in determining whether to grant such approval. Comments are solicited on all aspects of the temporary rule.

**DATE:** The temporary regulation is effective July 13, 1988. Comments must be received on or before September 19, 1988. The regulation will expire on December 31, 1988.

**ADDRESS:** Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at the Board's Information Services Office, 801 17th Street NW., Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** Deborah Dakin, Regulatory Counsel, (202) 377–6445; Daniel G. Lonergan, Attorney, (202) 377–6458; or Thomas J. Delaney, Attorney, (202) 377–6417, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** On July 13, 1988, the Board of Directors of Freddie Mac voted in principle to permit holders of the preferred stock of Freddie Mac to sell such stock to the general public as of January 1, 1989. Before this time, pursuant to a previous resolution creating the class of preferred stock covered by the July 13 action, such stock could only be held by stockholders of a Federal Home Loan Bank, a Federal Home Loan Bank in connection with collateral for advances, the FSLIC in connection with the receivership or insolvency of a holder of the preferred stock, a pre-approved market maker or nominee thereof, or a specialist on any national securities exchange. Additionally, single holders of such preferred stock were limited in the maximum amount of shares each could hold to 150,000. Freddie Mac's Board of Directors also acted on July 13, 1988 to increase sequentially the maximum number of shares that any single holder could own from 150,000 to 6000,000 by January 1, 1989.

Currently, Freddie Mac preferred stock is primarily held by the approximately 3,000 insured institutions that own stock in the Federal Home Loan Banks. In general, the Board believes that any decision to purchase or sell Freddie Mac stock both before and after January 1, 1989, is best left to the sound business judgment of insured institutions themselves. The Board is concerned, however, with the possible effect of the removal of the restrictions on ownership and transferability of Freddie Mac preferred stock on those insured institutions not currently meeting their minimum regulatory capital requirement as set forth in 12 CFR 563.13 and 563.14. These institutions require closer supervision as a result of their impaired capital position.

The Board has therefore determined to require that such institutions obtain the approval of their PSA or his designee, subject to the concurrence of the Office of Regulatory Activities, before buying or selling any of the shares of Freddie Mac preferred stock they now hold or may later acquire. This restriction is similar to restrictions the Board has imposed on such institutions in other contexts. *See, e.g.*, 12 CFR 563.4 (brokered deposits), 12 CFR 563.9–8(c)(2)(iii) (equity risk investments). In so acting, the Board believed, as it does today, that the impaired capital status of such insured institutions warrants particular supervisory scrutiny of certain business decisions. The PSA for the institution is best able to determine whether an institution's decision to purchase or sell Freddie Mac preferred stock may have adverse consequences for the institution and ultimately the FSLIC as insurer of the institution.

The Board believes that the elimination of the ownership and transferability restrictions that had previously applied to Freddie Mac

preferred stock may subject the value of those securities to increased market fluctuations. This could, in turn, have a significant impact on the financial condition of insured institutions holding such stock. To the extent that institutions can immediately increase their holdings of Freddie Mac preferred stock, the results of potential market fluctuations in the value of this stock take on more significant consequences.

With the removal of the previous Freddie Mac restriction significantly limiting the amount any single holder of preferred stock could own, insured institutions can immediately double their holdings of Freddie Mac preferred stock. At the same time, the value of this stock will be subject to unprecedented volatility. The capital position of institutions that are not presently meeting their minimum capital requirement may be particularly vulnerable to these variations. The Board believes that before such institutions can significantly alter their holdings of Freddie Mac preferred stock, there must be an opportunity for the institution's Principal Supervisory Agent to evaluate the potential impact resulting from a change in the level of this type of investment. Although the Freddie Mac action does not contemplate that this preferred stock will be available for sale to the public until January 1, 1989, in the interim the Board recognizes that intra-industry purchases and sales among institutions with impaired capital could detrimentally affect the sound operation of such institutions.

The temporary rule that the Board adopts today will prevent institutions that do not meet their minimum regulatory capital requirement under §§ 563.13 and 563.14 from buying or selling Freddie Mac preferred stock without first obtaining written approval from their PSA.

The rule requires that institutions not meeting their minimum capital requirement must submit written applications to their PSAs. It sets forth factors to be considered by the PSAs when evaluating an institution's application to buy or sell Freddie Mac preferred stock. In making a written application to buy or sell Freddie Mac preferred stock, institutions will be required to demonstrate the effect that the proposed transaction will have on their overall asset composition. Factors that are to be addressed in applications include, but are not limited to, the effect proposed transactions will have on an institution's future growth, its risk exposure, and portfolio diversification. The PSA may require an institution to include in its application any additional information that the PSA may consider relevant to evaluating portfolio risk in connection with the purchase or sale of Freddie Mac preferred stock. If the institution proposes to sell its shares of Freddie Mac preferred stock, it must indicate in its application the manner in which the resulting proceeds are to be used. Moreover, it must comply with any conditions imposed by the PSA. All institutions not meeting their minimum capital requirement that sell shares of Freddie Mac preferred stock may, at the discretion of the PSA, be further restricted from declaring dividends for the years in which the gain on such sales are recognized until an amount equivalent to such gain is subtracted from the institution's earnings. Any waivers granted by the PSA with respect to other dividend restrictions will not apply to this dividend restriction.

Although the Board has determined that immediate action is required to ensure that institutions failing their regulatory capital requirement buy and sell Freddie Mac stock consistent with principles of safety and soundness, the Board also believes that public comment on today's rule will be useful in shaping any permanent rule that it may determine to adopt upon expiration of this temporary rule. It therefore requests public comment on the temporary regulation adopted today. Comments received will be taken into account in determining the scope of any final regulation that the Board may adopt.

The Administrative Procedure Act, 5 U.S.C. 553(b), (d)(3), provides that the general provisions requiring notice and comment and a delay in the effective date of a substantive regulation do not apply when an agency determines that the public interest would not be served by notice and comment before agency action and that good cause for depensing with the delay in effective date exists and is published with the rule. As set forth elsewhere in this **SUPPLEMENTARY INFORMATION,** the Board believes that in order to preserve its ability to supervise institutions with impaired capital adequately its Principal Supervisory Agents must be able to act promptly to monitor the decision by any such institution to purchase or sell Freddie Mac preferred stock. It anticipates that it will have adequate time, during the period this temporary rule is in effect, to review any comments received during the comment period and any other supervisory information regarding these institutions to determine the most effective way of affording such institutions managerial flexibility in this area consistent with the Board's supervisory concerns. The Board therefore finds that good cause exists for dispensing with a delayed effective date.

### Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by comments and agency assessment and response.* These elements will be considered by the Board in reviewing any comments received and will be fully addressed in any final regulation.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). This temporary regulation will only affect those small savings and loan associations that are not currently meeting their regulatory capital requirements. The Board believes that the temporary rule provides the least burdensome alternative available for addressing the Board's supervisory concern about the safe and-sound operation of such insured institutions in this area. The Board will consider any alternatives presented in comments addressing this concern.

### List of Subjects in 12 CFR Part 563

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

## SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

## PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

**Authority:** Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as amended by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend Part 563 by adding a new § 563.13–3 to read as follows:

**§ 563.13-3 Sale of Federal Home Loan Mortgage Corporation Preferred Stock.**

(a) An insured institution that fails to satisfy its minimum regulatory capital requirement as set forth in §§ 563.13 and 563.14 of this subchapter, notwithstanding any previously granted capital forbearances, shall not be permitted to sell or buy Federal Home Loan Mortgage Corporation preferred stock except as approved by the Principal Supervisory Agent or his designee, subject to the concurrence of the Office of Regulatory Activities.

(b) An insured institution that fails to satisfy the regulatory capital requirement set forth in §§ 563.13 and 563.14 of this subchapter shall make written application to the Principal Supervisory Agent for permission to buy or sell preferred stock of the Federal Home Loan Mortgage Corporation. The written application shall provide the Principal Supervisory Agent or his designee with sufficient information to demonstrate how the proposed sale or purchase of such preferred stock will affect the overall level of risk of the institution's portfolio, as well as any additional information which the institution may deem relevant to supervisory review. In evaluating the overall risks posed by the sale or purchase of preferred stock to the institution's portfolio, the Principal Supervisory Agent or his designee shall consider the purposes for which such sale proceeds will be used, the effect of investment of the proceeds on the composition and quality of the institution's asset portfolio, the institution's growth plans, the likely effect on the institution's liquidity, as well as any additional relevant information the Principal Supervisory Agent or his designee may seek in evaluating overall portfolio risk.

(c) The Principal Supervisory Agent or his designee, in approving the application of an insured institution not meeting its minimum regulatory capital requirement to sell such preferred stock, may impose conditions upon his approval, including the requirement that such institution not declare a dividend unless it has first subtracted any gain realized from the sale of such stock from earnings.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Assistant Secretary.*

[FR Doc. 88-16200 Filed 7-18-88; 8:45 am]

BILLING CODE 6720-01-M

## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 611 and 617

## Organization; Examinations and Investigations

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration Board (Board) adopts in final form, with no changes, the proposed rule deleting 12 CFR Part 617, Subpart A, and amending 12 CFR Part 611 that was published with request for comment on May 12, 1988 (53 FR 16936). The rule eliminates duplicative or unnecessary regulations relating to Farm Credit Administration (FCA) examinations and investigations.

**EFFECTIVE DATE:** This rule shall become effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session. Notice of effective date will be published in the Federal Register.

**FOR FURTHER INFORMATION CONTACT:**

Stephen G. Smith, Examiner, Office of Examination, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4160,

or

James M. Morris, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On May 12, 1988 (53 FR 16936), the FCA published a proposed rule to delete duplicative and unnecessary regulations concerning examinations. The FCA requested comments on the proposed rule. The deadline for comments was June 13, 1988. The FCA received one comment, a letter from the Farm Credit Banks of Baltimore supporting the proposed rule. For the reasons set forth below, the FCA Board adopts the regulations as final with no changes.

12 CFR Part 617, Subpart A, contains regulations governing examinations and investigations conducted by FCA examiners. The FCA is deleting those provisions of Part 617, Subpart A, which are merely duplicative of provisions contained in the Farm Credit Act of 1971, as amended (Act), 12 U.S.C. 2001 et seq., or which are more appropriately addressed in internal agency procedures.

The provisions of § 617.7000 repeat § 5.19 of the Act except the definition of "System institution" in § 617.7000 includes incorporated or unincorporated service organizations. In order to clarify that service organizations are subject to FCA examination, § 611.1136 is amended and § 617.7000 is deleted.

Section 617.7010 is deleted in its entirety as System institutions have reported possible criminal violations directly to the appropriate U.S. Attorney without involvement of the Farm Credit Administration since June 1986.

Section 617.7020 is deleted because it merely repeats requirements contained in § 5.21 of the Act, relating to examination of other financing institutions.

Section 617.7030 is duplicative of statutory requirements relating to the responsibilities of Farm Credit Administration examiners. Accordingly, § 617.7030 is deleted.

Section 617.7070 provides a non-exclusive listing of some of the elements of an examination. The scope of a particular examination is a matter of discretion with the FCA. However, the general scope of examinations is specified in the FCA Examination Manual and Examination Bulletins, which are publicly available. Therefore § 617.7070 is deleted.

Sections 602.205 and 602.289 contain the requirements concerning disclosure which are currently contained in § 617.7080. The requirements of § 617.7080 concerning reporting to the banks are operational in nature and are covered by the Examination Manual and Examination Bulletins. Therefore, § 617.7080 is deleted in its entirety.

Section 617.7090 repeats §§ 611.1168 and 611.1176 concerning examination of institutions in receivership or liquidation and is accordingly deleted.

**List of Subjects in 12 CFR Parts 611 and 617**

Agriculture, Banks, Banking, Investigations, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, Chapter VI, Title 12, Code of Federal Regulations is amended as follows:

## PART 611—ORGANIZATION

1. The authority citation for Part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 4.12, 5.9, 5.10, 5.17; 12 U.S.C. 2011, 2031, 2071, 2091, 2121, 2183, 2243, 2244, 2252; sec. 412 of Pub. L. 100-233.

2. Section 611.1136 is revised to read:

**§ 611.1136 Incorporated and unincorporated service organization—regulation and examination.**

Incorporated and unincorporated service organizations shall be subject to

regulations for the banks and associations of the Farm Credit System, and shall be subject to examination by the Farm Credit Administration.

## PART 617—INVESTIGATIONS

3. The authority citation for Part 617 is revised to read as follows:

**Authority:** Secs. 5.9, 5.17(a)(10); 12 U.S.C. 2243, 2252(a)(10).

4. The heading for Part 617 is revised to read as follows:

### Subpart A—[Removed and Reserved]

5. Subpart A consisting of §§ 617.7000, 617.7010, 617.7020, 617.7030, 617.7070, 617.7080, and 617.7090 is removed and reserved.

Date: July 12, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-16155 Filed 7-18-88; 8:45 am]

BILLING CODE 6705-01-M

## 12 CFR Part 615

### Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

**AGENCY:** Farm Credit Administration.

**ACTION:** Reaffirmation of Final Rule and Technical Change.

**SUMMARY:** On January 11, 1988, the Farm Credit Administration (FCA) chartered the Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) (53 FR 1679, January 21, 1988) pursuant to § 6.20 of the Farm Credit Act of 1971, as added by the Agricultural Credit Act of 1987, Pub. L. 100-233 (1987). The Financial Assistance Corporation is to issue debt securities in the capital markets to provide capital to institutions of the Farm Credit System which are experiencing financial difficulty. On April 5, 1988 the Farm Credit Administration Board (Board) adopted final regulations regarding the issuance of Financial Assistance Corporation securities and book-entry procedures applicable to such securities and requested comments thereon (53 FR 12140, April 13, 1988). The Board hereby responds to the comment received on the final regulations and makes an unrelated technical change in the authority citation.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Michael J. LaVerghetta, Financial and Credit Standards Division, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4444.

or

James M. Morris, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102-5090 (703) 883-4020, TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** Final regulations concerning the issuance of Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) securities and book-entry procedures applicable to such securities were adopted on April 7, 1988 with a request for comments. The deadline for receiving comments on the final regulations was May 13, 1988. Only one comment letter, from the Farm Credit Corporation of America (FCCA), was received concerning the regulations.

The FCCA supported § 615.5560 as adopted, but expressed a need for definitions for terms used in the sections of Subpart 0 of Part 615 which were incorporated by reference in § 615.5560(c). The Board sees no need to amend the final regulation, since the incorporation by reference of the sections listed in § 615.5560 incorporates appropriate meanings of the terms used in the sections incorporated, wherever those meanings are found.

In order to aid those using the regulations, FCA revises the authority citation, to provide the reader with parallel citations to both the Farm Credit Act of 1971, as amended, and the United States Code.

### List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

Accordingly, the final rule amending Part 615 of Chapter VI, Title 12, Code of Federal Regulations, which was published at 53 FR 12140 on April 13, 1988 is reaffirmed effective April 13, 1988, with the following technical change:

## PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for Part 615 is revised to read as follows:

**Authority:** Secs. 4.3, 5.9, 5.17, 6.20, 6.26; 12 U.S.C. 2154, 2243, 2252, 2278b, 2278b-6.

Date: July 12, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-16156 Filed 7-18-88; 8:45 am]

BILLING CODE 6705-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### 15 CFR Parts 373 and 399

[Docket No. 80516-8116]

### Editorial Corrections to the Commodity Control List

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Bureau of Export Administration maintains the Commodity Control List, which includes those items subject to Department of Commerce controls. A final rule, published on July 21, 1987 (52 FR 27498), amended the Commodity Control List by transferring instruments employing time compression of the input signal or Fast Fourier Transform techniques from ECCN 1529A to ECCN 1533A. This rule amends Parts 373 and 399 of the Export Administration Regulations, revising certain references that now read ECCN 1529A to read ECCN 1533A.

**EFFECTIVE DATE:** This rule is effective July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule mentions collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) that are cleared under OMB control numbers 0625-0002, 0625-0041, and 0625-0052.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section

553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects in 15 CFR Parts 373 and 399**

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 373 and 399 of the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citation for 15 CFR Parts 373 and 399 continues to read as follows:

**Authority:** Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

**PART 373—[AMENDED]**

*Supplement No. 1 [Amended]*

2. In Supplement No. 1 to Part 373 (Commodities Excluded from Certain Special License Procedures), the entry for ECCN 1529 is removed and a new entry for ECCN 1533 is inserted between the existing entries for ECCN 4530 and ECCN 1534, as follows:

Supplement No. 1 to Part 373

Commodities Excluded from Certain Special License Procedures

* * * * * *

1533 Sub-entries (h) and (i) only; Signal analyzers (including spectrum analyzers) employing time compression of the input signal or FFT (Fast Fourier Transform) techniques.

* * * * *

**PART 399—[AMENDED]**

*Supplement No. 1 [Amended]*

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1516A is amended by revising the heading, as follows:

*1516A Receivers, and specially designed components and accessories therefor. (For instruments using time compression of input signal or FFT techniques associated with receivers, see ECCN 1533A (h) and (i).)*

* * * * *

4. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1529A is amended by revising the *"Special Licenses Available"* paragraph to read *"Special Licenses Available:* No special licenses are available for commodities under foreign policy controls for nuclear weapons delivery purposes (§ 376.18(c)). See Part 373 for special licenses available for commodities defined in ECCN 1529A."

5. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1533A is amended by removing the parenthetical sentence that begins ("See paragraph (b)(4) of ECCN 1529A . . .") under the heading and by revising the *"Special Licenses Available"* paragraph to read *"Special Licenses Available:* Certain items under paragraphs (h) and (i) of the List below are excluded from special licenses—see the entry for ECCN 1533A, Supplement No. 1 to Part 373. See Part 373 for special licenses available for other commodities defined in ECCN 1533A."

Dated: July 9, 1988.

**Michael E. Zacharia,**

*Assistant Secretary for Export Administration.*

[FR Doc. 88–16175 Filed 7–18–88; 8:45 am]

BILLING CODE 3510-DT-M

**15 CFR Part 375**

**[Docket No. 80506–8106]**

## Editorial Clarification

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule, which neither expands nor limits the provisions of the Export Administration Regulations (15 CFR Parts 368–399), makes an editorial clarification in the provisions of § 375.6(c) regarding substitution of Form ITA–629P for the People's Republic of China (PRC) end-User Certificate.

This rule clarifies that Form ITA–629P may be substituted for the PRC End-User Certificate when the commodities to be exported are replacement parts or sub-assemblies, not tools or test equipment, for previously exported equipment and are valued at $75,000 or less.

**EFFECTIVE DATE:** This rule is effective July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Will Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377–3856.

**SUPPLEMENTARY INFORMATION:**

**Rulemaking Requirements**

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under Control Number 0625–0136.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for

public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

5. Because of a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to John Black, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

### List of Subjects in 15 CFR Part 375

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 375 of the Export Administration Regulations is amended as follows:

1. The authority citation for 15 CFR Part 375 continues to read as follows:

**Authority:** Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

## PART 375—[AMENDED]

### § 375.6 [Amended]

2. In § 375.6, paragraph (c)(3) is revised by adding the words "(i.e., replacement parts or sub-assemblies, not tools or test instruments)" between the words "commodity" and "to be exported".

Dated: June 21, 1988.

**Vincent F. DeCain,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 88-16173 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-DT-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

### 24 CFR Part 290

**[Docket No. R-88-0707; FR-0432]**

## Management and Disposition of HUD-Owned Multifamily Projects

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule makes final certain rent-setting provisions relating to the management of HUD-owned multifamily housing projects. These provisions were one of the matters included in the proposed rule published on October 18, 1984 at 49 FR 40888, which involved an overall revision of 24 CFR Part 290, the rules governing the management and disposition of multifamily projects owned by HUD. Recent statutory amendments require further rulemaking before the Department can completely revise Part 290.

Under this final rule, HUD will set rents for projects acquired on or after the effective date of the rule as if the rent-setting requirements that governed rents before the project was acquired still applied.

**EFFECTIVE DATE:** September 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Marc Harris, Chief, Management Branch, Multifamily Property Disposition Division, Department of Housing and Urban Development, Room 6186, 451 7th Street, SW., Washington, DC 20410-8000. Telephone (202) 755-9280. Hearing- and speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### Background

On October 18, 1984, the Department published a proposed rule (49 FR 40888) to revise substantially 24 CFR Part 290, the regulations governing the management and disposition of HUD-acquired multifamily rental projects. The current Part 290 property disposition regulations were promulgated as an interm rule on October 1, 1979, at 44 FR 56608. The proposed rule was intended to conform the regulations more closely to section 203 of the Housing and Community Development Amendments of 1978, as amended (12 U.S.C. 1701z-11) (section 203); to decrease reliance on project-based Section 8 subsidies as a means of maintaining availability of units to low- and moderate-income persons; and to conform the rental structure in HUD-owned properties to statutory changes in rents charged under HUD's subsidy programs.

The Department received fifteen public comments. The commenters included several cities, legal aid societies and legal services corporations, the National Housing Law Project, public interest groups, project managers, and State housing finance agencies. In general, these public commenters were concerned with what they believed to be the overly broad amount of discretion in the proposed rule to manage and dispose of individual HUD-owned multifamily projects. They believed that the rule could permit management and disposition decisions that would result in a decrease in the supply of housing available to lower income families.

The proposed rule has also been the topic of Congressional hearings. *HUD's Proposed Revisions to the Multifamily Property Disposition Regulations: Hearing Before the Subcomm. on Employment and Housing of the House Comm. on Government Operations,* 99th Cong., 1st Sess. (February 20, 1985).

Section 181 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) substantially revised and expanded the scope of section 203. The Department was about to publish its final rule when this legislation was enacted, and is now developing further rulemaking to implement fully section 203 as recently amended.

The Department, however, believes that it is appropriate to publish as a final rule a portion of the proposed rule, namely, the provisions relating to the setting of rents in HUD-owned multifamily projects. The rent provisions implemented in this final rule are consistent with the goals of section 203(a), as revised by section 181 of the HCD Act of 1987. In particular they further the goal of:

> [P]reserving so that they are available to and affordable by low- and moderate-income persons—
>
> (A) all units in multifamily housing projects that are * * * formerly subsidized projects: and
>
> (B) in other multifamily housing projects owned by the Secretary, at least the units that are occupied by low- and moderate-income persons or vacant.
>
> (Section 203(a)(1) (A) and (B))

The current rule is anomalous because it continues to use 25 percent of adjusted income to set subsidized rents even

though all other HUD programs involving income-based rental assistance use 30 percent of adjusted income. In addition, the policy, implemented in this rule, to continue to set rents as they were set before HUD acquires the project, should minimize the need to make changes in tenant rent based solely on the fact that HUD has acquired the project.

*Comparison of the Current Rule, Proposed Rule, and Final Rule Rent Provisions*

*Current Rule*—Section 8 eligible tenants in formerly subsidized projects pay 25% of their adjusted income as rent. Other tenants pay the lesser of market rent or the gross potential rent.

*Proposed Rule*—Lower income tenants (including very low-income tenants) in occupancy, would pay a "Section 8" rent if needed to keep the unit affordable to these tenants. Very low-income new admissions would pay a "Section 8" rent if needed to make the rent charged to these new admissions comparable to rent already charged to existing tenants with comparable incomes. Lower income new admissions, other than very low-income new admissions, would pay a "Section 8" rent only in order to obtain full occupancy.

*Final Rule*—For a project owned by HUD when this final rule takes effect, the requirements of the current rule would continue to apply, except that the subsidized rent would be based on 30% of adjusted income, and the use of gross potential rent would be discontinued.

For a project acquired by HUD on or after the effective date of this final rule, rent would be set by HUD as if the rent-setting requirements for the program under which the project was insured or assisted before it was acquired by HUD still applied.

*Discussion of Public Comments on Rent Provisions*

Several commenters believed that the proposed § 290.14 could result in tenants in HUD-owned housing paying more rent than the congressionally mandated standard for Section 8 and public housing, and could result in displacement. They argued that the same uniform rent formula (then 29% of income for in-place tenants and 30% for new admissions) should apply to all lower income tenants in HUD-owned projects. One of these commenters also claimed that, to the extent that the regulation would permit HUD to charge market rents to lower income tenants of formerly subsidized housing, it is contrary to the statute.

The commenters did not specify the reasons for their concern that the proposed rule could cause displacement of tenants. Their concern may have arisen from the fact that providing a Section 8-based rent under the proposed rule was discretionary, and was conditioned on a determination by HUD that the reduced rent was necessary in order that the unit occupied by the lower income tenant remain available to and affordable by the tenant.

One commenter found the rent-setting provisions of the proposed rule confusing and potentially unfair. This commenter noted that most tenants in HUD-acquired projects would be eligible for reduced rents, and suggested that it would be simpler to provide rental rates at rents equivalent to those payable under Section 8.

The Department believes that the rent-setting requirements in the proposed rule were consistent with section 203, as it then existed, and would not cause displacement. It has revised the final rule in a way that both simplifies the policy and addresses the commenters' concerns about affordability and displacement.

Under the final rule, a tenant's rent in a project acquired after the effective date of the rule would be determined as if the rent-setting requirements that applied to the project before HUD's acquisition still applied. Thus, most tenants' rent would not be directly affected by the change of ownership. For example, if HUD acquired a project that had been insured under section 236 the National Housing Act, a tenant who had been paying basic rent before HUD's acquisition would continue to pay basic rent, and a tenant who received the benefit of rental assistance payments would continue to pay a rent equal to the amount that would be payable by the tenant if rental assistance payments were still being made. In addition, a newly admitted tenant's rent would be established as if the tenant were admitted before HUD acquired the project. For administrative convenience, rent in project acquired before the effective date of this rule will continue to be established under essentially the same rent-setting requirements that applied to these projects under the current rule immediately before the effective date of this rule. The final rule makes two changes from the current rule with respect to projects in inventory. First, eligible tenants in formerly subsidized projects would pay 30% (rather than 25%) of their adjusted income, which conforms to the percentage paid under HUD's various rent subsidy programs. Second, market rent would not be limited by gross potential rent. Gross potential rent is the rent needed to meet operating expenses plus an assumed debt service based on the terms of the original mortgage. Gross potential rent is an unnecessary restraint on market rent.

The commenter's recommendation that HUD apply a uniform rent formula (30% of adjusted income) to all lower income families, would require HUD to reduce rents—even for tenants who had not been receiving rental subsidy before acquisition—for the sole reason that HUD acquired the project. Both the final rule and the commenters' suggestion would further the two goals set out in section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z-11) that are most pertinent to the subject matter of this rule: namely, preserving the housing units so they can remain available to and affordable by low- and moderate-income families, and minimizing the involuntary displacement of tenants. The final rule, however, furthers these goals as section 203 directs, "in a manner that is consistent with the National Housing Act and this section and that will, in the least costly fashion among the reasonable alternatives available, further the goals. . . ." The Department, therefore, has not adopted the commenter's suggestion.

There is no absolute statutory prohibition against charging a lower income tenant market rent, and the commenter making this assertion cited none. The Department believes that the final rule is a reasonable implementation of the statutory goals in section 203. Under the final rule, HUD-owned projects would continue to provide affordable housing to low- and moderate-income persons on the same terms, with respect to rent, as the projects provided before acquisition by HUD.

Finally, several commenters recommended that HUD take a reasonable utility allowance into consideration when determining rents for a lower income tenant, as is done in HUD's assisted housing programs. The Department agrees. HUD currently takes a reasonable utility allowance into consideration in establishing rents (*see* § 290.17(c) of the current rule) and will continue to do so for tenants who pay their own utilities and whose rent is based on a percentage of adjusted income (*see* § 290.17(d) of this final rule).

**Other Matters**

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD

regulations in 24 CFR Part 50, which implements the National Environmental Policy Act of 1969, (42 U.S.C. 4321-4347). The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule revises the standards governing the setting of rent in multifamily housing projects during HUD's ownership. These revisions should not affect the ability of small entities, relative to larger entities, to bid for and acquire projects that HUD determines to sell.

This rule was listed as Sequence No. 950 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

**List of Subjects in 24 CFR Part 290**

Mortgage insurance, Low- and moderate-income housing.

Accordingly, the Department amends Chapter II, Part 290 of Title 24 of the Code of Federal Regulations as follows:

## PART 290—MANAGEMENT AND DISPOSITION OF HUD-OWNED MULTIFAMILY PROJECTS

1. The authority citation for 24 CFR Part 290 is revised to read as follows:

**Authority:** Secs. 202, 203, and 204, Housing and Community Development Amendments of 1978, (12 U.S.C. 1715z-1b, 1701z-11, 1701z-12); secs. 207, 211, National Housing Act (12 U.S.C. 1713, 1715b); sec. 202, Housing Act of 1959, (12 U.S.C. 1701q); sec. 312, Housing Act of 1964, (42 U.S.C. 1452b); secs. 7(d), 7(i), Department of HUD Act (42 U.S.C. 3535(d), (i)).

2. Section 290.17 is revised to read as follows:

**§ 290.17 Rental rates during ownership by HUD.**

(a) *Determining a schedule of maximum rental rates.* As soon as practicable, but no later than 30 days after it assumes management responsibility, HUD shall establish a schedule of maximum rental rates for each unit in a HUD-owned multifamily project that is comparable to the rates charged in other multifamily projects, based on unit size, location, condition, services, and amenities provided, and is conducive to attracting high occupancy without impacting adversely on the viability of other multifamily projects and other housing projects in the area. HUD shall review and update the maximum rental rate schedule periodically to maintain current comparability.

(b) *Rents in projects acquired on or after September 19, 1988.* Except as modified by this section, HUD shall set rents in a multifamily project acquired by HUD on or after *September 19, 1988,* as if the rent setting requirements that governed rents before the project was acquired still applied.

(1) To determine the appropriate rent and to obtain information that may be useful in HUD's disposition analysis, HUD shall request an income certification from each family in occupancy at the time of acquisition of a project by HUD. This certification of income shall be conducted as soon as practicable after HUD acquires the project. Certification of income is not required, however, if the family's income has been examined by the owner or by HUD not more than four months before HUD acquired the project. If a tenant does not certify income as required by this paragraph (b)(1), the tenant must pay the unit rent as determined under paragraph (a) of this section.

(2) HUD shall request an income certification from each family applying for admission to a rental housing project to determine the family's ability to pay the unit rent, eligibility for a subsidized rent, and (if the rent is based on a percentage of adjusted income) the family's subsidized rent. This information is also used in HUD's disposition analysis.

(3) HUD shall determine rent, for a unit in a multifamily project that, at the time of acquisition by HUD, had a market-based rent, from the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy.

(c) *Rents in projects acquired before September 19, 1988.* Each tenant (other than an eligible tenant in a formerly subsidized project) in a HUD-owned multifamily project acquired by HUD before September 19, 1988, shall be charged a rent based on the schedule of maximum rents established under paragraph (a) of this section. HUD, however, may set a lower rent, if it determines that a lower rent is necessary or desirable to maintain the existing economic mix in the project, prevent undesirable turnover, or increase occupancy. Each eligible tenant in a formerly subsidized project acquired by HUD before September 19, 1988 shall be charged the lesser of an amount equal to the tenant rent that would be payable by the eligible tenant under Part 813 of this title, or the rent established for the unit under paragraph (a) of this section.

(d) *Utility allowance.* For a tenant in a HUD owned rental housing project whose rent is based on a percentage of adjusted income, if the cost of utilities (except telephone) and other housing services for the unit is the responsibility of the tenant to pay directly to the provider of the utility or service, HUD shall deduct from the rent to be paid by the tenant to HUD an amount equal to HUD's estimate of the monthly costs of a reasonable consumption of the utilities and other services for the unit for an energy-conservative household of modest circumstances consistent with the requirement of a safe, sanitary, and healthful living environment.

(e) *Notice of rent changes.* Whenever HUD proposes an increase in rents in a HUD-owned multifamily project, HUD shall provide tenants 30 days notice of the proposed changes and an opportunity to review and comment on the new rent and supporting documentation. After HUD considers the tenants' comments and has made a decision with respect to its proposed rent change, HUD shall notify the tenants as to its decision, with the reasons for the decision. A tenant in occupancy before the effective date of any revised rental rate must be given 30 days notice of the revised rate, and any change in the tenant's rent is subject to the terms of an existing lease. Notices to each tenant must be personally delivered or sent by first class mail. General notices to all tenants must be posted in the project office and in appropriate conspicuous locations around the project.

Date: July 7, 1988.

James E. Schoenberger,

*General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.*

[FR Doc. 88-16124 Filed 7-18-88; 8:45 a.m.]

BILLING CODE 4210-27-M

## DEPARTMENT OF JUSTICE

### Office of the Attorney General

### 28 CFR Part 16

**[Order No. 1286-88]**

## Revision of Business Information FOIA Regulation Implementing Executive Order 12600 and Amendment of List of Public Reading Rooms

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This notice constitutes the final revision of a procedural regulation of the Department of Justice, 28 CFR 16.7, setting forth the procedures to be followed in notifying submitters of business information that such information has been requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552. This final revision brings the regulation into conformity with the criteria of Executive Order 12600, 52 FR 23781 (1987), and modifies its language for purposes of clarity. In addition, this notice contains a revised listing of the Department's public reading rooms, previously listed at 28 CFR 16.2(a).

**EFFECTIVE DATE:** August 18, 1988.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Huff or Daniel J. Metcalfe, Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530 ((202) 633-3642).

**SUPPLEMENTARY INFORMATION:** On March 23, 1988, the Department of Justice published a proposed revision of its business information notification regulation to clarify its language and to bring the provision into conformity with Executive Order 12600. 53 FR 9452 (1988). Public comment on the proposed regulation was invited, with the comment period extending to April 22, 1988.

### Analysis of Comments Received

One comment was received within the comment period, from the Reporters Committee for Freedom of the Press. This commenter was concerned that the notification procedures would interfere with the statutory time limits imposed on agencies for responding to FOIA requests and suggested that the Department's regulation include the language of the Executive Order that such notification procedures be accomplished "to the extent permitted by law." Inasmuch as this caveat is expressly included in the Executive Order, the Department has included it in § 16.7(c).

This proposed rule does not constitute a "major rule" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

### List of Subjects in 28 CFR Part 16

Freedom of information.

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

## PART 16—[AMENDED]

1. The authority citation for Part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 9701.

2. Section 16.2(a) is revised to read as follows:

**§ 16.2 Public reference facilities.**

(a) The Department of Justice shall maintain public reading rooms or areas at the locations listed below:

(1) United States Attorneys and United States Marshals—at the principal offices of the United States Attorneys listed in the United States Government Manual;

(2) Federal Bureau of Investigation—at the J. Edgar Hoover Building, 9th Street and Pennsylvania Avenue NW., Washington, DC;

(3) Immigration and Naturalization Service—at the Central Office, 425 I Street NW., Washington, DC, and at each District Office in the United States listed in the United States Government Manual;

(4) Drug Enforcement Administration—in Room 1207, 1405 I Street NW., Washington, DC;

(5) Civil Rights Division—in Room 948, 320 First Street, NW., Washington, DC;

(6) Community Relations Service—in Suite 330, 5550 Friendship Boulevard, Chevy Chase, Maryland;

(7) Office of the Pardon Attorney—in Suite 490, 5550 Friendship Boulevard, Chevy Chase, Maryland;

(8) United States Parole Commission—on the Fourth Floor, 5550 Friendship Boulevard, Chevy Chase, Maryland;

(9) Office of Justice Programs—in Room 1268 B, 633 Indiana Avenue, NW., Washington, DC;

(10) Foreign Claims Settlement Commission—in Room 400, 1120 20th Street, NW., Washington, DC;

(11) Executive Office For Immigration Review (Board of Immigration Appeals)—in Suite 1609, 5203 Leesburg Pike, Falls Church, Virginia;

(12) INTERPOL—in Room 907, 806 15th Street, NW., Washington, DC;

(13) All other components of the Department of Justice—at the Department of Justice, 10th Street and Constitution Avenue, NW., Washington, DC.

The public reference facilities of all components shall contain the materials relating to those components which are required by 5 U.S.C. 552(a)(2) to be made available for public inspection and copying.

* * * * *

3. Section 16.7 is revised to read as follows:

**§ 16.7 Business information.**

(a) *In General.* Business information provided to the Department of Justice by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Definitions.* The following definitions are used in reference to this section:

"Business information" means commercial or financial information provided to the Department by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

"Submitter" means any person or entity who provides business information, directly or indirectly, to the Department. The term includes, but is not limited to, corporations, state governments and foreign governments.

(c) *Notice to Submitters.* A component shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request or administrative appeal encompassing its business information wherever required under paragraph (d) of this section, except as is provided for in paragraph (i) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions thereof containing the business information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(d) *When Notice is Required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected from disclosure under Exemption 4, or (2) the component has reason to believe that the information may be protected from disclosure under Exemption 4.

(e) *Designation of Business Information.* Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Such designations shall be deemed to have expired ten years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(f) *Opportunity to Object to Disclosure.* Through the notice described in paragraph (c) of this section, a component shall afford a submitter a reasonable period of time within which to provide the component with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Notice of Intent to Disclose.* A component shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a component decides to disclose business information over the objection of a submitter, the component shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

(h) *Notice of FOIA Lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the component shall promptly notify the submitter.

(i) *Exceptions to Notice Requirements.* The notice requirements of paragraph (c) of this section shall not apply if:

(1) The component determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (e) of this section appears obviously frivolous; except that, in such case, the component shall provide the submitter with written notice of any final administrative decision to disclose business information within a reasonable number of days prior to a specified disclosure date.

Dated: July 8, 1988.

**Edwin Meese III,**

*Attorney General.*

[FR Doc. 88-16169 Filed 7-18-88; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### 32 CFR Part 273

**[DoD Directive 3210.2]**

### Research Grants and Title to Equipment Purchased Under Grants

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This amendment is issued to remove approval requirements previously required by 32 CFR Part 273. Paragraph 273.5(b) required approval of the Secretary of Defense or Deputy Secretary of Defense for research grants in excess of $1 million to institutions of higher education, hosptials, or nonprofit organizations. Paragraph 273.5(c) provided for approval by the Under Secretary of Defense for Research and Engineering or the Secretaries of the Military Departments for grants of $1 million or less. It has been determined by the Deputy Secretary of Defense that these approval requirements are no longer necessary.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Dr. M. Herbst, Office of the Deputy Under Secretary of Defense (Research and Advanced Technology), Room 3E114, the Pentagon, Washington, DC 20301, telephone (202) 694-0205.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 32 CFR Part 273**

Grant programs-science and technology; research.

Accordingly, 32 CFR Part 273 is amended as follows:

### PART 273—RESEARCH GRANTS AND TITLE TO EQUIPMENT PURCHASED UNDER GRANTS—[AMENDED]

1. The authority citation continues to read as follows:

**Authority:** Rev. Stat 161, 5 U.S.C. 301; Pub. L. 85-934.

**§ 273.5 [Amended]**

2. Section 273.5 is amended by removing paragraphs (b) and (c) of that section and redesignating paragraph "(d)" to "(b)"

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

July 14, 1988.

[FR Doc. 88-16240 Filed 7-18-88; 8:45 am]

BILLING CODE 3810-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 261

**[FRL-3416-2]**

### Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Technical Correction

**AGENCY:** Environmental Protection Agency.

**ACTION:** Technical correction to special requirements for conditionally exempt small quantity generators.

**SUMMARY:** On March 24, 1986 (51 FR 10174), EPA promulgated a final rule that established special requirements for generators of between 100 and 1,000 kilograms of hazardous waste per month (kg/mo). Generators of acute hazardous waste were not affected by this rulemaking. However, in drafting the requlatory amendments, EPA, through a typographical error, inadvertently changed a requirement for generators of acute hazardous waste. EPA recently became aware of this mistake and is today amending the regulation to restore the correct language, and inserting a note to further clarify the point.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424-9346 or (202) 382-3000. For specific questions

on this notice, contact Ms. Emily Roth, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4777.

**SUPPLEMENTARY INFORMATION:**

**I. Technical Correction**

On March 24, 1986 (51 FR 10174) EPA amended the regulations under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*, for hazardous waste generators to establish special standards for generators of 100–1,000 kg/mo. These generators had previously been conditionally exempt from regulation, but Congress, under RCRA Section 3001(d), required EPA to develop the new regulations. Congress, in RCRA section 3001(d)(7), made it clear that the EPA regulations that applied to generators of acute hazardous waste (see 40 CFR 261.11(a)(2)) were *not* to be affected by this new regulatory program. In drafting the new regulations, however, EPA inadvertently amended 40 CFR 261.5 in such a way as to imply that generators of acute hazardous waste would come under the new standards for generators of 100–1,000 kg/mo. The last sentence in the new § 261.5(f)(2), because of a typographical error, refers to "the time period of § 262.34(*d*)," emphasis added. Paragraph (d) was created on March 24, 1986 for generators of 100–1,000 kg/mo. EPA meant to refer to § 262.34(*a*), which is the paragraph generators of acute hazardous waste had been previously subject to. The difference is that paragraph (a) provides that, once the quantity limitations of § 261.5 are exceeded, generators may then accumulate waste on-site for up to 90 days without having to obtain a permit or interim status, while paragraph (d) allows 180 (or in some cases 270) days. EPA is today amending § 261.5(e) by adding a note clarifying how acute hazardous waste is regulated and amending § 261.5(f)(2) to refer to § 262.34(a) instead of (d).

EPA finds that it has good cause to make the corrections immediately effective and to promulgate the amendments without prior notice and opportunity for comment under both section 3010 of RCRA and section 552 of the Administrative Procedure Act. Comment is unnecessary because EPA, in the course of the rulemaking for generators of 100–1,000 kg/mo of hazardous waste, made it very clear we had no intention of amending the requirements for generators of acute hazardous waste. (See the preambles for the proposed rule, August 1, 1985, at 50 FR 31288, and the final rule, March 24, 1986, at 51 FR 10153). Generators of acute hazardous waste then had no reason to believe their requirements were being changed. EPA also notes that when the public has asked about this point, the Agency has noted that the reference to paragraph (d) was incorrect, the result of a typographical error, and that we planned to correct the rule at our earliest opportuntity.

Finally, EPA notes that we have no information to indicate that the 90-day time limit, or any of the requirements, in § 262.34(a) is inadequate for generators of acute hazardous waste. In fact, these are the time limits that have applied to such generators since November 19, 1980 (45 FR 76624), and public comment was accepted and considered on the 90-day generator requirements at that time (*id*). Consequently, additional comment is unnecessary, and since EPA never indicated that it intended to change the requirements for acute hazardous waste generators (and in fact indicated the opposite), the regulated community should not need any time to come into compliance with today's amendment. (EPA notes that Section 262.34(b) provides that the EPA Regional Administrator may grant a 30-day extension, on a case-by-case basis, for waste to remain on-site due to "unforeseen, temporary, and uncontrollable circumstances." Any generator of acute hazardous waste who cannot comply with the 90-day limit because of his confusion over the regulatory language should contact the Regional Administrator to obtain a 30-day extension.)

**II. Executive Order No. 12291-Regulatory Impacts**

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus is subject to the requirement to prepare a regulatory impact analysis. Today's amendment merely corrects a typographical error and does not impose new requirements, so it does not have an economic impact.

**III. Paperwork Reduction Act**

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

**IV. Regulatory Flexibility Act**

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis for all rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it merely corrects a typographical error, and so does not change previously existing rules.

**List of Subjects in 40 CFR Part 261**

Hazardous waste, Recycling.

Dated: July 13, 1988.

**J.W. McCoraw,**

*Acting Assistant Administrator, Office of Solid Waste and Emergency Response.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6922.

2. Section 261.5 is amended by adding the following comment to the end of paragraph (e) and by revising paragraph (f)(2) to read as follows:

**§ 261.5 Special requirements for hazardous waste generated by conditionally exempt small quantity generators.**

* * * * *

(e) * * *

(1) * * *

(2) * * *

[Comment: "Full regulation" means those regulations applicable to generators of greater than 1,000 kg of non-acutely hazardous waste in a calendar month.]

(f) * * *

(2) The generator may accumulate acute hazardous waste on-site. If he accumulates at any time acute hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all of those accumulated wastes are subject to regulation under Parts 262 through 266, 268, and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34(a) of this chapter, for accumulation of wastes on-site, begins when the accumulated wastes exceed the applicable exclusion limit;

* * * * *

[FR Doc. 88-16189 Filed 7-18-88; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Parts 262, 264, 265, 268 and 270**

## Farmer Exemptions; Technical Corrections

**AGENCY:** Environmental Protection Agency.

**ACTION:** Technical Corrections.

**SUMMARY:** On August 8, 1986, EPA promulgated regulations for the export of hazardous waste under the Resource Conservation and Recovery Act (RCRA), and in doing so moved the RCRA farmer exemption to a new section in the *Code of Federal Regulations* (CFR). EPA, however, failed to modify a number of other sections in the CFR which refer to the farmer exemption by section. Then, on July 8, 1987, EPA sought to amend the farmer exemption to make it clear that farmers who were otherwise exempt from hazardous waste regulations were also exempt from the land disposal restrictions. In doing so, however, EPA inadvertently moved the farmer exemption back to its old section (which was already occupied by the export regulations). Today's amendments will correct these errors.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free (800) 424-9346 or (202) 382-3000. For specific questions on this notice contact Ms. Emily Roth, EPA, 401 M Street SW., Washington, DC 20460, (202) 382-4777.

**SUPPLEMENTARY INFORMATION:**

### I. Technical Corrections

The following amendments are promulgated today in 40 CFR:

1. Section 262.10(b) is amended by changing the reference "§ 262.51" to § 262.70;"
2. Section 262.10(d) is amended by changing the reference "§ 262.51" to "§ 262.70" and by adding "Part 268" (the land disposal restrictions) to the list of Parts farmers are exempt from;
3. Section 262.51 is revised so that it contains the definitions for the hazardous waste export regulations. This change was made on August 8, 1986 (51 FR 28664), but then the Agency inadvertently revised the section on July 8, 1987 (52 FR 25760);
4. Section 262.70 is amended so that "Part 268" (the land disposal restrictions) is added to the Parts a farmer may be exempt from. The Agency attempted to make this change July 8, 1987 (52 FR 25760), but mistakenly amended the wrong section;
5. Section 264.1(g)(4) is amended by changing the reference from "§ 262.51" to "§ 262.70;"
6. Section 265.1(c)(8) is amended by changing the reference from "§ 262.51" to § 262.70;"
7. Section 268.1(c)(5) is amended by changing the reference from "§ 262.51" to "§ 262.70;"
8. Section 270.1(c)(2)(ii) is amended by changing the reference from "§ 262.51" to "§ 262.70."

These amendments correct cross-references in the regulations and correct changes in the regulations made by mistake. All of the provisions were originally promulgated after public notice and opportunity for comment and there are no new issues raised by these corrections. In addition, these amendments do not impose any new substantive requirements on any persons. For these reasons, the Agency has good cause under RCRA § 3010 and the Administrative Procedure Act for making these amendments immediately effective without additional public notice and opportunity for comment.

### II. Regulatory Impacts

The regulations promulgated today are merely renumbering actions and so have no impacts on the regulated community.

*A. Executive Order No. 12291—Regulatory Impacts*

Under Executive Order No. 12291, EPA must determine whether a regulation is "major" and thus is subject to the requirement to prepare a regulatory impact analysis. Today's amendment merely corrects CFR section numbering errors and does not impose new requirements, so it does not have an economic impact.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a regulatory flexibility analysis for all proposed rules unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 601(b), that this rule will not have a significant impact on a substantial number of small entities because it merely involves renumbering actions, and so does not change previously existing rules.

*C. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., EPA must consider the paperwork burden imposed by any information collection request in a proposed or final rule. This rule will not impose any new information collection requirements.

**List of Subjects for Parts 262, 264, 265, and 270**

Hazardous waste, Exports, Farmer exemption.

Dated: July 13, 1988.

J.W. McGraw,

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

For the reasons set out in the preamble, Title 40 of the *Code of Federal Regulations* is amended as follows:

## PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

I. In Part 262:

1. The authority citation for Part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6938.

2. Section 262.10 is amended by revising paragraphs (b), (c), and (d) to read as follows:

**§ 262.10 Purpose, scope, and applicability.**

* * * * *

(b) A generator who treats, stores, or disposes of hazardous waste on-site must only comply with the following sections of this part with respect to that waste: Section 262.11 for determining whether or not he has a hazardous waste, § 262.12 for obtaining an EPA identification number, § 262.34 for accumulation of hazardous waste, § 262.40 (c) and (d) for recordkeeping, § 262.43 for additional reporting, and if applicable, § 262.70 for farmers.

(c) Any person who imports hazardous waste into the United States must comply with the standards applicable to generators established in this part.

(d) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of § 262.70 is not required to comply with other standards in this part or 40 CFR parts 270, 264, 265, or 268 with respect to such pesticides.

* * * * *

3. Section 262.51 is revised to read as follows:

**§ 262.51 Definitions.**

In addition to the definitions set forth at 40 CFR 260.10, the following definitions apply to this subpart:

"Consignee" means the ultimate treatment, storage or disposal facility in a receiving country to which the hazardous waste will be sent.

"EPA Acknowledgement of Consent" means the cable sent to EPA from the U.S. Embassy in a receiving country that acknowledges the written consent of the

receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

"Primary Exporter" means any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR Part 262, Subpart B, or equivalent State provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

"Receiving country" means a foreign country to which a hazardous waste is sent for the purpose of treatment, storage or disposal (except short-term storage incidental to transportation).

"Transit country" means any foreign country, other than a receiving country, through which a hazardous waste is transported.

4. Section 262.70 is revised to read as follows:

**§ 262.70 Farmers.**

A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this part or other standards in 40 CFR Parts 264, 265, 268, or 270 for those wastes provided he triple rinses each emptied pesticide container in accordance with § 261.7(b)(3) and disposes of the pesticide residues on his own farm in a manner consisent with the disposal instructions on the pesticide label.

## PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

II. In Part 264:

1. The authority citation for Part 264 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. Section 264.1 is amended by revising paragraph (g)(4) to read as follows:

**§ 264.1 Purpose, scope, applicability.**

* * * * *

(g) * * *

(4) A farmer disposing of waste pesticides from his own use in compliance with § 262.70 of this chapter; or

* * * * *

## PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

III. In Part 265:

1. The authority citation for Part 265 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. Section 265.1 is amended by revising paragraph (c)(8) to read as follows:

**§ 265.1 Purpose, scope, applicability.**

* * * * *

(c) * * *

(8) A farmer disposing of waste pesticides from his own use in compliance with § 262.70 of this chapter; or

* * * * *

## PART 268—LAND DISPOSAL RESTRICTIONS

IV. In Part 268:

1. The authority citation for Part 268 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, and 6924.

2. Section 268.1 is amended by revising paragraph (c)(5) to read as follows:

**§ 268.1 Purpose, scope, and applicability.**

* * * * *

(c) * * *

(5) Where a farmer is disposing of waste pesticides in accordance with § 262.70.

* * * * *

## PART 720—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

V. In Part 270:

1. The authority citation for Part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

2. Section 270.1 is amended by revising paragraph (c)(2)(ii) to read as follows:

**§ 270.1 Purpose and scope of these regulations.**

* * * * *

(c) * * *

(2) * * *

(i) * * *

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in § 262.70 of this chapter;

* * * * *

[FR Doc. 88-16190 Filed 7-18-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 22

**[CC Docket No. 85-388]**

### Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; corrections.

**SUMMARY:** The Federal Communications Commission is correcting the text of Section 22.917(c)(1)(ii) as amended in the Final Rule (*Fourth Report and Order*) FCC 88-154, a summary of which was published in the **Federal Register** at 53 FR 18091, May 20, 1988, concerning Rural Service Areas.

**EFFECTIVE DATE:** June 20, 1988.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Sari E. Greenberg, Mobile Services Division, Common Carrier Bureau; (202) 632-6450.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission is correcting § 22.917(c)(1)(ii) at 53 FR 18093, by adding the following phrase at the end of the paragraph: ". . . and must be sufficient to cover the costs of the proposed RSA systems."

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-16093 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-14; RM-6099]**

### Radio Broadcasting Services; Batesville and Charleston, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The following action is taken in response to a request filed jointly by Batesville Broadcasting Company and

Charleston Broadcasting Company, Inc. This document substitutes FM Channel 263C2 for Channel 240A at Batesville, Mississippi, and modifies the Batesville Broadcasting Company's license for Station WBLE to specify Channel 263C2. The coordinates for Channel 263C2 at Batesville are 34–25–26 and 89–48–47. This document also substitutes Channel 239A for Channel 232A at Charleston, Mississippi and modifies the Charleston Broadcasting Company, Inc.'s license for Station WTGY to specify Channel 239A in lieu of Channel 232A. The coordinates for Channel 239A at Charleston are 33–58–43 and 90–06–47. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–14, adopted June 10, 1988, and released July 12, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In Section 73.202(b), the Table of FM Allotments under Mississippi is amended by removing Channel 240A and adding Channel 263C2 at Batesville and by removing Channel 232A and adding Channel 239A at Charleston.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–16145 Filed 7–18–88; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 87–478; RM–6019; RM–6296]**

## Television Broadcasting Services; Roseburg and Canyonville, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of KMTR, Inc., allots Channel 36 to Roseburg, Oregon, as the community's second local television service. Channel 36 can be allotted to Roseburg, Oregon, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. However, any application which is filed for this channel which does not specify at least a 175 mile separation to Portland, Oregon, may not be accepted for filing if the Commission's freeze on such applications is still in effect. See 52 FR 28346, July 29, 1987. The counterproposal of Gee Jay Broadcasting Inc. requesting the allotment of Channel 36 to Canyonville, Oregon, is dismissed. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 87–478, adopted June 7, 1988, and released July 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Television Table of Allotments is amended by revising the entry for Roseburg, Oregon, by adding Channel 36.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–16146 Filed 7–18–88; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Part 73**

**[MM Docket No. 86–469; RM–6585, RM–5759, RM–5761]**

## Radio Broadcasting Services; Hilton Head Island and Bluffton, SC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Island Communications, Inc., substitutes Channel 300C2 for Channel 288A at Hilton Head Island, SC, and modifies its permit for Station WIJY to specify the higher powered channel. At the request of Hilton Head Broadcasting Corp., the Commission substitutes Channel 291C2 for Channel 292A at Hilton Head Island, SC, and modifies its license for Station WHHR–FM to specify the higher powered channel. At the request of Dohara Associates, the Commission substitutes Channel 295C2 for Channel 296A at Bluffton, SC, and modifies its permit for station WLOW to specify the higher powered channel. The three Class C2 channels can be allocated to their respective communities in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter sites specified in their licenses or construction permits. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 26, 1988.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Report and Order, MM Docket No. 86–

469, adopted June 10, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for South Carolina is amended by revising the entry for Bluffton by removing Channel 296A and adding Channel 295C2 and by revising the entry for Hilton Head Island by removing Channels 288A and 292A and adding Channel 291C2 and Channel 300C2.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16147 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 86-32; RM-5006; RM-5040; RM-5041; RM-5217; RM-5300; FCC 88-199]**

## Radio Broadcasting Services; Greenwood, Seneca, Aiken and Clemson, SC and Biltmore Forest, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document denies an Application for Review of action which allotted FM Channel 243A to Biltmore Forest, North Carolina and which denied a counterproposal filed by Tri-County Broadcasting Corporation to allot that channel to Clemson, South Carolina. Tri-County's request for waiver of the principal city coverage requirement was denied. This document also allots Channel 285A to Clemson on a conditional basis with the window application period delayed until Station WAGQ, Athens, Georgia, is licensed to operate at a site which permits the Clemson allotment to meet the minimum distance separation requirements of Section 73.207 of the Commission's Rules. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** August 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Karl Kensinger, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 86-32, adopted June 13, 1988, and released July 5, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW; Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments for South Carolina, is amended by adding the entry of Clemson, Channel 285A.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-16184 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Parts 73 and 76**

**[Gen. Docket No. 87-24; FCC 88-180]**

## Cable Television Services; Program Exclusivity in the Cable and Broadcast Industry

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules.

**SUMMARY:** In this *Report and Order* (*Order*), the Commission adopts changes to its rules regarding program exclusivity, to remove anticompetitive restrictions on the ability of broadcasters to serve their viewers. The action is needed to provide a common set of fairly-enforced ground rules, which will result in proper market incentives for video outlets to deliver the programming that will maximize consumer benefits, rather than foster the economically wasteful duplication of programming that is likely under our current rules.

**EFFECTIVE DATE:** August 18, 1988, except for §§ 76.92-76.95, which will become effective August 18, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Gordon, Office of Plans and Policy, (202) 653-5940.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, Gen. Docket No. 87-24, adopted May 18, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

**Summary of Report and Order**

1. In this proceeding, the Commission considers changes to its rules regarding program exclusivity in the cable television and broadcast industry. The instant *Order* adopts changes to three of these rules. First, we extend exclusivity protection to broadcasters who purchase syndicated programming, by adopting simplified syndicated exclusivity rules to promote fair and efficient competition among all the video programming delivery systems from which viewers may select. Broadcasters may enforce any contractually-obtained syndicated exclusivity rights beginning August 18, 1989. We emphasize that our actions in this matter do not directly bestow exclusivity rights on broadcasters, but simply permit broadcasters to obtain the same enforceable exclusive distribution rights in syndicated programming that all other video programming distributors already enjoy. Second, we modify our network non-duplication rules, making them similar to the syndicated exclusivity rule provisions where possible and extending their scope to any retransmissions of network programming. Again, these modifications do not become enforceable until August 18, 1989. The non-duplication rules will remain effective in their present format until that time. Third, we modify our territorial exclusivity rule to allow broadcasters to acquire *national* exclusive rights to non-network programming.

2. This proceeding is a direct outgrowth of concerns we expressed in our Report and Order in the "must-carry" proceeding (51 FR 44606, December 11, 1986). Among the governmental actions which that decision explicitly identified as requiring reexamination where the compulsory copyright law and our 1980 action repealing the syndicated exclusivity rules. It was determined that copyright issues would be dealt with separately from the communications issues presented in this docket. Thus, the scope of this proceeding was limited to the effects on the television distribution market and the competitive imbalance resulting from our current cable-broadcast exclusivity rules. Because changes to those rules could affect or be affected by our territorial exclusivity rules, we also sought comment on the territorial exclusivity rules.

3. The Notice of Inquiry and Notice of Proposed Rulemaking (Notice) in this proceeding (52 FR 15738, April 30, 1987) posed three major questions: (1) Whether we should amend our program exclusivity rules to reinstitute some form of syndicated exclusivity rules that would permit broadcasters to negotiate for enforceable exclusive exhibition rights with respect to syndicated programming; (2) whether we should modify our network non-duplication rules which currently permit network affiliates to show network programming on an exclusive basis; and (3) whether we should relax or eliminate the territorial exclusivity rules which delineate the maximum amount of geographic exclusivity a broadcaster may obtain vis-a-vis other broadcasters. After full and careful review of the comments received in response to the Notice, we answer these questions in the affirmative.

4. In adopting simplified exclusivity rules, the Commission acknowledges that our 1980 decision removing such rules was based on certain assumptions and conditions which have changed in the intervening years. The exclusivity rules were eliminated for two reasons: (1) To increase programming and time diversity for cable subscribers, and (2) to foster the development of new cable systems. Further analysis leads us now to conclude that the reasoning that shaped the 1980 decision was flawed in two significant respects. First the Commission mistakenly justified the rules' repeal based on an analysis of how their repeal or retention would affect particular competitors, rather than competition itself, in the local television market. Second, the Commission failed to analyze the effects on the local television market of denying broadcasters the ability to enter into contracts with enforceable exclusive exhibition rights when they had to compete with cable operators who could enter into such contracts.

5. The Commission at that time had only just began to change its view of cable as a supplement to over-the-air broadcasting, and it still failed to appreciate fully the role that cable would come to play as a full competitor in the video marketplace. The incomplete 1980 analysis led the Commission to mischaracterize the role that exclusivity rules play in the functioning of the local television distribution market. Equally important, this mischaracterization caused it to ignore the effect on that market of the asymmetry introduced when broadcasters' enforceable exclusivity rights in syndicated programming were abolished while both cable operators and network affiliates providing network programming continued to enjoy such enforceable rights. Such a regulatory scheme introduces a bias into the market process, with the result that success in the marketplace becomes an artifact of regulation, rather than an indicator that the successful competitor is meeting consumer demands efficiently. We find no compelling public interest argument that would justify such an asymmetric treatment of competitors.

6. Further, we find ample evidence in the record that the cable and broadcast industries have grown in ways quite different from what we expected when we rescinded the syndicated exclusivity rules in 1980. As a result, the costs of no syndicated exclusivity to broadcasters and program suppliers in terms of lost revenues, and to the public in terms of foregone program diversity, are far greater than anticipated in 1980, while the benefit to the public—time and episode diversity—can be satisfied by other methods. Even using the 1980 cost-benefit analysis, the Commission must find that the benefits of syndicated exclusivity outweigh its associated costs.

7. More importantly, the limitations our current rules impose on broadcasters actually work against the public interest by preventing television viewers from getting the best possible mix of programs across different types of video outlets. That is, some programs that broadcasters could acquire if they could enforce exclusivity are currently likely to be unattainable by them. Such programs are provided by other outlets, or perhaps not at all. Because local viewers may be diverted to distant stations, the ability of local advertisers as a group to make the best use of all available advertising media is reduced. As a consequence, suppliers of syndicated programs do not produce as rich and diverse a mix of programs as they would produce if the local broadcasters who buy their programs had the same rights to enforce exclusive contracts that cable and broadcast networks already enjoy. We believe that reimposition of syndicated exclusivity would lead to the development of new programs to take the place of those for which broadcasters enforce exclusivity.

8. The restoration of syndicated exclusivity protection is also consistent with our policy of relying on competition, whenever feasible, to accomplish our goals under the Communications Act. Competition is generally far more reliable than regulation for fostering fair and efficient use of the means of mass communication. We believe that as long as those conditions are met and we can also continue to meet all of our responsibilities under the Communications Act, we should not favor one delivery mode over another. To do so may predetermine the competitive outcome, and eliminate any presumption that the outcome that occurs is the one most beneficial to society.

9. The new syndicated exclusivity regulations are the simplest and most straightforward rules that will allow the marketplace for video programming to function evenhandedly, at low cost, and in a manner that is fully responsive to viewers. The specifics of these new regulations are indicated in the amendatory section below. They differ from the former exclusivity rules in several ways. For example, unlike the old rules, the syndicated exclusivity rules adopted today treat all types of syndicated product as a unit, rather than sorting the programming into categories, each subject to varying provision. Also, unlike the former rules, the new syndicated exclusivity regulations apply to all syndicated programming covered by exclusivity contracts, whatever the size of the broadcast market. However, small cable systems, with under 1,000 subscribers, are exempt from the requirements of the new exclusivity rules.

10. The new rules provide that exclusivity may run for the length of time specified in the contract granting such exclusivity to the broadcaster. They further indicate that a station's right to exercise its syndicated options will not depend on carriage by the cable

system. Other provisions of the new rules concern the geographical extent of exclusivity, notification issues, contract terms and exclusivity determination in existing contracts. As stated above, these requirements become enforceable beginning one year from the effective date of these regulations.

11. The second rule change adopted through this decision revises the network non-duplication rules. The network non-duplication rules, like the syndicated exclusivity rules, allow a network affiliate to prevent a cable system from simultaneously importing another affiliate network program signal into its market. Thus, each affiliate is normally the exclusive distributor of network programming in its own market. Our analysis suggested that because the network programming material is identical, the rules actually protect the local advertising and the public service announcements within and adjacent to network programming. They do not, however, allow the network to increase its revenues. In the Notice we suggested that broadcasters who are network affiliates should have the same right to contract for exclusivity with respect to their principal programming as other broadcasters. We argued that many of the same policy concerns about fair competition, and enhancing diversity of programming and efficient distribution, apply here as well. Finally, we observed that the difference between the network non-duplication rules and the former syndicated exclusivity rules appears to be one more of degree than of kind. Henceforth, both will simply permit the broadcaster to negotiate for and enforce exclusivity provisions in their program contracts.

12. In the Notice, the Commission sought comment on how, if at all, the network non-duplication rules should be changed. We further sought comment on whether we should return to same-day protection, who should be able to invoke the rule, whether the network is in essentially the same position as the copyright holder, whether there might be instances where the interests of the network and the station in invoking the rule might diverge, and whether a network's invoking the rule might cause the public harm. Finally, we asked whether one rule might suffice for both network and syndicated product, and whether changes in our waiver or other procedures might be warranted.

13. After reviewing the numerous comments received in response to the Notice, we continue to believe that the private organization of networks is an efficient method of doing business, and that it is in the public interest to allow enforcement of reasonable exclusivity to support that method of distribution. There is evidence that the importation of duplicating network signals can have severe adverse effects on a station's audience. Loss of audience by affiliates undermines the value of network programming both to the affiliate and to the network. Thus, an effective non-duplication rules continues to be necessary.

14. However, technological changes, primarily satellite distribution of signals, that permit easy movement of affiliates' signals across time zones now necessitate a change in the existing non-duplication rules. These technological changes have seriously increased the potential for disruption, leading the Commission to conclude that an increase in network programming exclusivity protection is necessary to allow network arrangements that provide important benefits to viewers to continue to function efficiently. We have also determined that, similar to syndicated programming, the contractual relationship between a network and its affiliates, rather than the Commission Rules, is the appropriate determinant of the extent of no-duplication protection. Therefore, we shall not limit network non-duplication protection to any particular period of time, leaving it to the parties to determine a mutually agreeable arrangement.

15. Network non-duplication protection has a purpose analogous to that of syndicated exclusivity; namely to allow all participants in the marketplace to determine, based on their own business judgment, what degree of programming exclusivity will best allow them to compete in the marketplace and most effectively serve their viewers. Thus, where possible, the network non-duplication protection should conform closely to our other programming exclusivity provisions. As in the syndicated exclusivity rules adopted in this decision, small cable systems, with under 1,000 subscribers, are exempt from the non-duplication rules. Also like the exclusivity rules, the modifications will not be effective until August 18, 1989. The network non-duplication rules will remain in effect in their present format until that time.

16. Specifically, we have to decided: (1) To retain the current geographic limits, including the priorities set forth in 47 CFR 76.92 and the exceptions thereto as set forth in 47 CFR 76.92 (f) and (g) on the extent of non-duplication protection, pending further exploration in a Further Notice of Proposed Rulemaking on geographic issues; (2) to leave enforcement of network non-duplication to the local broadcaster; (3) to allow broadcasters sole standing to invoke exclusivity protection; (4) to affirm that broadcasters need not be carried on a cable system in order to enforce network non-duplication protection for which it has negotiated; and (5) to adopt notification procedures, whereby affiliates enforce the non-duplication protection for which they have bargained, that are the same as those we have adopted for syndicated exclusivity.

17. Several commenters from the broadcast industry requested that we review our policy of granting cable systems waivers of compliance with the network non-duplication rules. Currently, such waivers are based on the cable systems' ability to demonstrate that no significant harm would befall the broadcast station by virtue of its duplicating the network signal. The burden is then shifted to the broadcaster to prove that a waiver would harm the station. Becasue we are retaining and strengthening our network non-duplication rules, and placing greater reliance on the contractual relations between the parties, we no longer believe this is a proper criterion for granting waivers. We believe that such waivers inappropriately interfere with effectively exclusive arrangements, and that the burden of proof is misplaced on broadcasters. The relevant question is whether such exclusive arrangements ultimately operate to foster competition among the various program providers and promote a greater diversity of programming for viewers. We believe that network non-duplication rules promote such an outcome. Therefore, we eliminate our existing waiver policy.

18. With respect to existing waivers, upon proper notification by the broadcast television station requesting non-duplication protection, the cable television system shall comply therewith by one year from the effective date of this section or sixty days after notification, whichever is later. We note that, as in the case of syndicated exclusivity, cable systems remain free to negotiate with the local broadcast affiliates of neworks for the right to continue such carriage.

19. Our decision deals with several matters relating to whether our action here is consistent with the first amendment and within the authority delegated us through the Communications Act. In the Notice, we expressed our belief that promulgation of these exclusivity rules lay within our authority and that there was no

statutory or constitutional impediment to our taking this action. While many commenting parties shared our belief, those opposed most particularly to syndicated exclusivity asserted that the Cable Act of 1984, the Copyright Revision Act of 1976, or the first amendment impose legal barriers to our reimposition of these rules. We have examined carefully the arguments of those commenters claiming that we lack authority. These arguments have failed to persuade us that our initial assessment of our statutory authority was incorrect. Accordingly, we reaffirm our belief that our action amending and extending our exclusivity provisions with respect to network and syndicated programming is within the scope or our authority under the Communications Act and is consistent with the first amendment and the Copyright Act.

20. Finally, in the Notice, we sought comment on the possibility of eliminating or modifying § 73.658(m) of the rules. This rule limits the geographic area in which a television station may obtain exclusivity rights for non-network programs against other broadcast television stations. Specifically, the existing rule prohibits a television station from entering into a contract or arrangement with a non-network program producer, distributor, or supplier which precludes another television station located more than thirty-five miles away from obtaining the broadcast rights to the same programming.

21. We did not receive enough substantial data to effectively decide whether to modify of eliminate or leave untouched the non-network territorial exclusivity rule. Therefore, we will issue a further notice of proposed rule making in the near future to seek additional comment and information on the geographic limits of all program exclusivity arrangements, including those established under non-network territorial exclusivity. Separate consideration of the issues associated with the territorial exclusivity rule will provide us with a more comprehensive record on which to base our decision. However, because we have determined that certain broadcasters, e.g. superstations, compete for programming in a national market, we are modifying the existing rule in one respect, to permit broadcast stations to purchase nationwide exclusivity against other broadcast stations. Until we are able to develop a more complete record regarding the non-network territorial exclusivity issue, the existing rule will, with this one exception, remain in place in its current form.

**Final Regulatory Flexibility Analysis Statement**

22. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adoped rules and modifications will have a significant impact on a substantial number of small entities, particularly broadcasters and cable operators. Through this decision, we make three changes to our rules relating to program exclusivity in the cable and broadcast industries. First, we adopt simplied syndicated exclusivity rules that should promote fair and efficient competition among all the delivery systems for video programming from which viewers may select. These rules will permit, but not require, broadcasters to obtain the same enforceable exclusive distribution rights in syndicated programming that all other video programming distributors already enjoy. Second, we modify our network non-duplication rule provisions to extend their scope to proteciton against any transmission of network programming and to simplify their administration and enforcement. Third, we retain the existing limits on territorial exclusivity, but intend to issue a further notice on the issue, and do modify it in one respect—to permit broadcast stations to purchase nationwide exclusivity against other broadcast stations.

23. In order to minimize the expense of obtaining equipment inherent in reimposition of the syndicated exclusivity rule provisions and the network non-duplication provisions, systems serving fewer than 1,000 subscribers will be exempt from the requirements of both of these provisions. We believe that equipment costs to the remaining systems will be affordable, may be amortized over a number of years, and note that such equipment may be used for nonregulatory revenue-producing functions such as ad insertion as well.

24. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981).

**Paperwork Reduction Act Statement**

25. The rules adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burdens on the public. Implementation of these new/modified requirements and burdens will be subject to approval by the Office of Management and Budget, as prescribed by the Act.

26. Public reporting burden for this collection of information is estimated to vary from one minute to one hour per response, with an average of ten minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Plans and Policy, Federal Communications Commission, Washington, DC 20554; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**Ordering Clause**

27. Accordingly, IT IS ORDERED THAT, under the authority contained in sections 4(i), 4(g), 302, 303(a) and 604 of the Communications Act of 1934, as amended, Parts 73 and 76 of the Commission's Rules and Regulations are amended as set forth below, subject to approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980.

**List of Subjects**

*47 CFR Part 73*

Television broadcasting.

*47 CFR Part 76*

Cable television.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

**Program Exclusivity Rules**

Parts 73 and 76 of Title 47 of the Code of Federal Regulations are amended to read as follows:

1. The authority citations for Parts 73 and 76 continue to read as follows:

**Authority: 47 U.S.C. 154 and 303.**

**PART 73—[AMENDED]**

2. Section 73.658 is amended by revising paragraph (m) to read as follows:

**§ 73.658 Affiliation agreements and network program practices; territorial exclusivity in non-network program arrangements.**

* * * * *

(M) *Territorial exclusivity in non-network arrangements.* (1) No television station shall enter into any contract,

arrangement, or understanding, expressed or implied; with a non-network program producer, distributor, or supplier, or other person; which prevents or hinders another television station located in a community over 56.3 kilometers (35 miles) away, as determined by the reference points contained in § 76.53 of this chapter, (if reference points for a community are not listed in § 76.53, the location of the main post office will be used) from broadcasting any program purchased by the former station from such non-network program producer, distributor, supplier, or other person, except that a television station may secure exclusivity against a television station licensed to another designated community in a hyphenated market specified in the market listing as contained in § 76.51 of this chapter for those 100 markets listed, and for markets not listed in § 76.51 of this chapter, the listing as contained in the ARB Television Market Analysis for the most recent year at the time that the exclusivity contract, arrangement or understanding is complete under practices of the industry. As used in this paragraph, the term "community" is defined as the community specified in the instrument of authorization as the location of the station.

(2) Notwithstanding paragraph (m)(1) of this section, a television station may enter into a contract, arrangement, or understanding with a producer, supplier, or distributor of a non-network program if that contract, arrangement, or understanding provides that the broadcast station has exclusive national rights such that no other television station in the United States may broadcast the program.

* * * * *

3. Section 76.5 is amended by revising paragraph (o) and adding new paragraph (nn) to read as follows:

**§ 76.5 Definitions.**

* * * * *

(o) A network program is any program delivered simultaneously to more than one broadcast station regional or national, commercial or noncommercial.

* * * * *

(nn) A "syndicated program" is any program sold, licensed, distributed or offered to television station licensees in more than one market within the United States other than as network programming as defined in § 76.92.

* * * * *

4. Subpart F, consisting of §§ 76.92 through 76.163, is revised to read as follows: (new §§ 76.92–76.95 will become effective August 18, 1989, in place of old §§ 76.92–76.99):

**Subpart F—Nonduplication Protection and Syndicated Exclusivity**

Sec.



## Subpart F—Nonduplication Protection and Syndicated Exclusivity

### § 76.92 Network non-duplication; extent of protection.

(a) Upon receiving notification pursuant to § 76.94, a cable community unit located in whole or in part within the geographic zone for a network program, the network non-duplication rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

(b) For purposes of this section, the order of nonduplication priority of television signals carried by a community unit is as follows:

(1) First, all television broadcast stations within whose specified zone the community of the community unit is located, in whole or in part;

(2) Second, all smaller market television broadcast stations within whose secondary zone the community of the community unit is located, in whole or in part.

(c) For purposes of this section, all noncommercial educational television broadcast stations licensed to a community located in whole or in part within a major television market as specified in § 76.51 shall be treated in the same manner as a major market commercial television broadcast station, and all noncommercial educational television broadcast stations not licensed to a community located in whole or in part within a major television market shall be treated in the same manner as a smaller market television broadcast station.

(d) Any community unit operating in a community to which a 100-watt or higher power translator is located within the predicted Grade B signal contour of the television broadcast station that the translator station retransmits, and which translator is carried by the community unit shall, upon request of such translator station licensee or permittee, delete the duplicating network programming of any television broadcast station whose reference point (See Section 76.53) is more than 55 miles from the community of the community unit.

(e) Any community unit which operates in a community located in whole or in part within the secondary zone of a smaller market television broadcast station is not required to delete the duplicating network programming of any major market television broadcast station whose reference point (See § 76.53) is also within 55 miles of the community of the community unit.

(f) A community unit is not required to delete the duplicating network programming of any television broadcast station which is significantly viewed in the cable television community pursuant to § 76.54.

**Note:** With respect to network programming, the geographic zone within which the television station is entitled to enforce network non-duplication protection and priority of shall be that geographic area agreed upon between the network and the television station. In no event shall such rights exceed the area within which the television station may acquire broadcast territorial exclusivity rights as defined in § 73.658(m), except that small market television stations shall be entitled to a secondary protection zone of 20 additional miles.

### § 76.93 Parties entitled to network non-duplication protection.

Television broadcast station licensees shall be entitled to exercise non-duplication rights pursuant to § 76.92 in accordance with the contractual provisions of the network-affiliate agreement.

### § 76.94 Notification.

(a) In order to exercise non-duplication rights pursuant to § 76.92, television stations shall notify each cable television system operator of the non-duplication sought in accordance with the requirements of this Section. Non-duplication protection notices shall include the following information:

(1) The name and address of the party requesting non-duplication protection and the television broadcast station holding the non-duplication right;

(2) The name of the program or series (including specific episodes where necessary) for which protection is sought;

(3) The dates on which protection is to begin and end.

(b) Broadcasters entering into contracts providing for network non-duplication protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. A broadcaster shall be entitled to non-duplication protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available.

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The television station requesting exclusivity.

(d) A television station exercising exclusivity pursuant to § 76.92 shall provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the television station, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed.

**§ 76.95 Exceptions.**

The provisions of §§ 76.92–76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

**§ 76.97 Effective dates.**

The provisions outlined in §§ 76.92–76.95 shall become enforceable on August 18, 1989. The rules in effect on May 18, 1988 will remain operative until August 18, 1989.

**§ 76.151 Syndicated program exclusivity: extent of protection.**

Upon receiving notification pursuant to § 76.155, a cable community unit located in whole or in part within the geographic zone for a syndicated program, the syndicated exclusivity rights to which are held by a commercial television station licensed by the Commission, shall not carry that program as broadcast by any other television signal, except as otherwise provided below.

**Note:** With respect to each syndicated program, the geographic zone within which the television station is entitled to enforce syndicated exclusivity rights shall be that geographic area agreed upon between the non-network program supplier, producer or distributor and the television station. In no event shall such zone exceed the area within which the television station has acquired broadcast territorial exclusivity rights as defined in § 73.658(m).

**§ 76.153 Parties entitled to syndicated exclusivity.**

(a) Television broadcast station licensees shall be entitled to exercise exclusivity rights pursuant to § 76.151 in accordance with the contractual provisions of their syndicated program license agreements, consistent with § 76.159.

(b) Distributors of syndicated programming shall be entitled to exercise exclusive rights pursuant to § 76.151 for a period of one year from the initial broadcast syndication licensing of such programming anywhere in the United States; provided, however, that distributors shall not be entitled to exercise such rights in areas in which the programming has already been licensed.

**§ 76.155 Notification.**

(a) In order to exercise exclusivity rights pursuant to § 76.151, distributors or television stations shall notify each cable television system operator of the exclusivity sought in accordance with the requirements of this section. Syndicated program exclusivity notices shall include the following information:

(1) The name and address of the party requesting exclusivity and the television broadcast station or other party holding the exclusive right;

(2) The name of the program or series (including specific episodes where necessary) for which exclusivity is sought;

(3) The dates on which exclusivity is to begin and end.

(b) Broadcasters entering into contracts containing syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. A broadcaster shall be entitled to exclusivity protection beginning on the later of:

(1) The date specified in its notice to the cable television system; or

(2) The first day of the calendar week (Sunday-Saturday) that begins 60 days after the cable television system receives notice from the broadcaster;

(c) In determining which programs must be deleted from a television broadcast signal, a cable television system operator may rely on information from any of the following sources published or otherwise made available.

(1) Newspapers or magazines of general circulation;

(2) A television station whose programs may be subject to deletion. If a cable television system asks a television station for information about its program schedule, the television station shall answer the request:

(i) Within ten business days following the television station's receipt of the request; or

(ii) Sixty days before the program or programs mentioned in the request for information will be broadcast; whichever comes later.

(3) The distributor or television station requesting exclusivity.

**§ 76.156 Exceptions.**

(a) Notwithstanding the requirements of §§ 76.151–76.155, a broadcast signal is not required to be deleted from a cable community unit when that cable community unit falls, in whole or in part, within that signal's grade B contour, or when the signal is significantly viewed pursuant to § 76.54 in the cable community.

(b) The provisions of §§ 76.151–76.155 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

**§ 76.157 Exclusivity contracts.**

A distributor or television station exercising exclusivity pursuant to § 76.151 shall provide to the cable system, upon request, an exact copy of those portions of the exclusivity contracts, such portions to be signed by both the distributor and the television station, setting forth in full the provisions pertinent to the duration,

nature, and extent of the exclusivity terms concerning broadcast signal exhibition to which the parties have agreed.

**§ 76.159 Requirements for invocation of protection.**

For a station licensee to be eligible to invoke the provisions of this subpart, it must have a contract or other written indicia that it holds syndicated exclusivity rights for the exhibition of the program in question. Contracts entered on or after August 18, 1988, must contain the following words: "the licensee [or substitute name] shall, by the terms of this contract, be entitled to invoke the protection against duplication of programming imported under the Compulsory Copyright License, as provided in § 76.151 of the FCC rules." Contracts entered into prior to August 18, 1988, must contain either the foregoing language or a clear and specific reference to the licensee's authority to exercise exclusivity rights as to the specific programming against cable television broadcast signal carriage by the cable system in question upon the contingency that the government reimposed syndicated exclusivity protection. In the absence of such a specific reference in contracts entered into prior to August 18, 1988, the provisions of these rules may be invoked only if (a) the contract is amended to include the specific language referenced above or (b) a specific written acknowledgement is obtained, from the party from whom the broadcast exhibition rights were obtained that the existing contract was intended, or should now be construed by agreement of the parties, to include such rights. A general acknowledgement by a supplier of exhibition rights that specific contract language was intended to convey rights under these rules will be accepted with respect to all contracts containing that specific language. Nothing in this section shall be construed as a grant of exclusive rights to a broadcaster where such rights are not agreed to by the parties.

**§ 76.161 Substitutions.**

Whenever, pursuant to the requirements of the syndicated exclusivity rules, a community unit is required to delete a television program on a broadcast signal that is permitted to be carried under the Commission's rules, such community unit may, consistent with these rules and the sports blackout rules at 47 CFR 76.67, substitute a program from any other television broadcast station. A program substituted may be carried to its completion, and the community unit need not return to its regularly carried signal until it can do so without interrupting a program already in progress.

**§ 76.163 Effective dates.**

No cable system shall be required to delete programming pursuant to the provisions of §§ 76.151–76.159 prior to August 18, 1989.

[FR Doc. 88-16187 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 53, No. 138
Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1106 and 1126

**[Docket Nos. AO-231-A56 and AO-210-A48; DA-88-110]**

### Milk in the Texas and Southwest Plains Marketing Areas; Rescheduling of Hearing on Proposed Marketing Agreements and Orders

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Rescheduling of public hearing on proposed rulemaking.

**SUMMARY:** The hearing on proposals to amend the producer-handler definitions of the Texas and Southwest Plains milk orders, originally scheduled to begin on July 19, 1988, has been rescheduled to begin on September 7, 1988.

**DATE:** The rescheduled hearing will convene at 9:00 a.m., local time, on September 7, 1988.

**ADDRESS:** The rescheduled hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214) 399-1010.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** This administration action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

A notice was issued on June 10, 1988 (53 FR 22499), giving notice of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75071 (214) 399-1010, beginning at 9:00 a.m., local time, on July 19, 1988, with respect to proposed amendments to the marketing agreements and orders regulating the handling of milk in the Texas and Southwest Plains marketing areas.

Notice is hereby given, pursuant to the rules of practice applicable to such proceedings (7 CFR Part 900), that the said hearing is rescheduled to be held on September 7, 1988 at the same place and time as originally scheduled (Holiday Inn, Dallas-Ft. Worth Airport South, beginning at 9:00 a.m., local time).

Prior documents in the proceeding:

Notice of hearing: Issued June 10, 1988; published June 16, 1988 (53 FR 22499).

**List of Subjects in 7 CFR Parts 1126 and 1106**

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1126 and 1106 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on: July 14, 1988.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 88-16237 Filed 7-18-88; 8:45 am]

BILLING CODE 3410-02-M

## Packers and Stockyards Administration

### 9 CFR Part 203

### Statements of General Policy

**AGENCY:** Packers and Stockyards Administration; U.S. Department of Agriculture.

**ACTION:** Notice of intent to institute proposed rulemaking; extension of comment period.

**SUMMARY:** On May 24, 1988, a notice of intent to institute proposed rulemaking was published in the **Federal Register** (53 FR 18572) advising that the Packers and Stockyards Administration was considering proposing a Policy Statement which would provide a "bill back" mechanism designed to shift economic responsibility for violative residues in slaughter livestock from the packer to the producer.

That notice provided that comments regarding the proposal should be filed with the Administration on or before July 25, 1988.

Pursuant to a request from interested parties for additional time to prepare their comments, the time for filing comments concerning the notice of intent is hereby extended 60 days.

**DATE:** The time for filing comments is hereby extended to and including September 23, 1988.

**ADDRESS:** Written comments may be mailed to: Packers and Stockyards Administration, Room 3039-South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected during normal business hours in the office of the Administrator.

**FOR FURTHER INFORMATION CONTACT:** Harold W. Davis, Director, Livestock Marketing Division, Packers and Stockyards Administration, Room 3408-South Building, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-6951.

Done at Washington, DC, this 13th day of July, 1988.

**Calvin W. Watkins,**

*Acting Administrator, Packers and Stockyards Administration.*

[FR Doc. 88-16161 Filed 7-18-88; 8:45 am]

BILLING CODE 3410-20-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

### Licensee Action During National Security Emergency

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Nuclear Regulatory Commission proposes to amend its regulations to allow a licensee to take action that departs from approved technical specifications in a national security emergency. The amendment is necessary to specify in the regulations that for a national security emergency a licensee is permitted to take a needed action although it may deviate from technical specifications. This amendment will allow the licensee to implement national security objectives as designated by the national command authority through the NRC.

**DATE:** Comment period expires August 18, 1988. Comments reviewed after this

date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver written comments to: One White Flint North, Room 16H, 11555 Rockville Pike, Rockville, Maryland. Comments may also be delivered to the NRC Public Document Room, 1717 H Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joan Aron, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–9001.

**SUPPLEMENTARY INFORMATION:**

### Background

On April 1, 1983, the Commission published in the **Federal Register** (48 FR 13966), a final rule that set out § 50.54 of 10 CFR entitled, "Conditions of Licenses," that contains a provision permitting a licensee to take reasonable action that departs from a license condition or a technical specification (contained in a license issued under this part) in an emergency when this action is immediately needed to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. However, this provision does not apply to a national security emergency. The proposed addition would allow a licensee to take action that departs from approved technical specifications in a national security emergency when this action is immediately needed to implement national security objectives as directed by the national command authority through the NRC.

### Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed regulation is the type of action described in categorical exclusion 10 CFR 51.22 (c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed regulation.

### Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by The Office of Management and Budget approval number 3150–0011.

### Regulatory Analysis

The Commission previously has granted authority prusuant to 10 CFR 50.54(x) to nuclear power reactor licensees to take reasonable action that departs from a license condition or a technical specification in an emergency when the action is immediately necessary to protect the public health and safety and no action consistent with license conditions and technical specifications that can provide adequate or equivalent protection is immediately apparent. This proposed rule will provide the same flexibility to licensees for the purpose of attaining national security objectives in accordance with governmental directives during a declared national emergency due to nuclear war or natural disaster. The proposed change does not significantly impact state and local government and geographic locations; health, safety, and the enviornment; or costs to licensees, the NRC, or other Federal agencies. The proposed rule is in the interest of the common defense and security of the United States because it would assist the NRC in maintaining the public health and safety in a national security emergency during which some deviation from facility technical specifications may be appropriate. This constitutes the regulatory analysis for this proposed rule.

### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule affects only licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121. Because these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

### Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and, therefore, that a backfit analysis is not required for this proposed rule, because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactor, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment at 10 CFR Part 50.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 is revised to read as follows:

**Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 50.10 also issued under secs. 101, 185, 63 Stat. 936, 955 as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 13 Stat. 853 (42 U.S.C. 4332). Sections 50.13 and 50.54(dd) also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.80 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 50.103 also issued under sec. 108, 68 Stat. 939, as amend (42 U.S.C. 2138). Appendix F also issued under sec. 187, 68 Stat 955 (42 U.S.C. 2237). For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.46 (a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.7(a), 50.10 (a)–(c), 50.34 (a) and (e), 50.44 (a)–(c), 50.46 (a) and (b), 50.47(b), 50.48 (a), (c), (d), and (e), 50.49(a), 50.54(a(i), (i)(1), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(c), 50.64(b), and 50.80 (a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.49 (d), (h), and (j), 50.54 (w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(d), 50.70(a), 50.71 (a)–(c) and (e), 50.72(a), 50.73 (a) and (b), 50.74, 50.78, and 50.90 are issued under sec. 161(o), 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. In § 50.54, a new paragraph (dd) is added to read as follows:

**§ 50.54 Conditions of licenses.**

* * * * *

(dd) A licensee may take reasonable action that departs from a licensee condition or a technical specification (contained in a license issued under this part) in a national security emergency when this action is immediately needed to implement national security objectives as directed by the national command authority through the NRC. A national security emergency is established by a law enacted by the Congress or by an order or directive issued by the President pursuant to statutes or the Constitution of the United States. The discretionary authority under this paragraph is in addition to the authority granted under paragraph (x) of this section, which remains in effect unless otherwise directed by the Commission during a national security emergency.

Dated at Rockville, Maryland, this 7th day of July, 1988.

For the Nuclear Regulatory Commission.

**Victor Stello, Jr.,**

*Executive Director for Operations.*

[FR Doc. 88-16197 Filed 7-18-88; 8:45 am]

**BILLING CODE 7590-01-M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 88-CE-18-AD]**

## Airworthiness Directives; Piper PA-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt a new Airworthiness Directive (AD) applicable to Piper PA-60 series airplanes as modified by Machen, Inc., Supplemental Type Certificate (STC) SA980NM which pertains to the installation of AVCO Lycoming Models TIO- and LTIO-540-J2BD engines. The AD would require repetitive inspections and replacement as necessary of the exhaust system components and engine oil lines, including the turbocharger oil supply line and its routing. A report of an inflight fire has been received that indicates fire resulted from deterioration of the engine oil lines and exhaust system componets. If not corrected, this condition could result in inflight fires and subsequent loss of the airplane.

**DATE:** Comments must be received on or before August 18, 1988.

**ADDRESSES:** Machen, Inc. Service Bulletins (SB) No. SB 66-002 dated September 22, 1981, SB 66-011 dated January 22, 1984, SB 66-018 dated June 5, 1987, and SB 66-019 dated January 8, 1988, applicable to this AD may be obtained from Machen, Inc., South 3608 Davison Boulevard, Spokane, Washingon 99204; Telephone number (509) 838-5326. A copy of this information may also be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael H. Borfitz, ANM 191D, Denver FAA, Denver Aircraft Certification Field Office, 10455 East 25th Avenue, Suite 307, Aurora, Colorado 80010; Telephone (303) 340-5575.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, and arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 88-CE-18-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

### Discussion

A report has been received of an inflight engine fire caused by leaking turbocharger lubrication oil impinging on the exhaust system of a Piper PA-60 series Aerostar modified by Machen, Inc., STC No. SA980NM which involves the installation of AVCO Lycoming Models TIO- and LTIO-540-J2BD engines. The subsequent investigation indicated the oil leak resulted from the oil line deterioration caused by the flexible hose being in contact with the exhaust system.

Machen, Inc., has issued Service Bulletin SB 66-018, which sets forth the procedures for repetitive inspections and re-routing (if necessary) of the turbocharger oil line and inspection of the exhaust system. SB 66-018 is based on accomplishment of Machen, Inc. SB 66-002 and 66-011 that give instructions for installation of clamp tab assemblies. Machen, Inc., has also issued SB 66-019 which replaces the exhaust system components affected by SB 66-018 and eliminates the requirement for repetitive inspections of the exhaust system.

Since this condition is likely to exist or develop in other Piper PA-60 series airplanes, modified per Machen, Inc. STC SA980NM, the proposed AD would require inspection and replacement, if necessary, of the exhaust system components and engine oil lines of these airplanes, in accordance with the SB's previously mentioned.

The FAA has determined there are approximately 31 airplanes affected by the proposed AD. It would take approximately four manhours per airplane to accomplish the required actions, at an average labor cost of $40 per manhour, for a cost per airplane of $160. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $4,960 for each reoccuring fleet-wide inspection. The cost of compliance with the proposed AD is so small that it will not involve a significant financial impact on any small entities operating these airplanes. The regulations set forth in this notice would be promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt State law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant econommic impact, positive or negative, or a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new Airworthiness Directive:

**Piper:** Applies to PA-60 series airplanes certificated in any category modified per Machen, Inc., Supplemental Type Certificate (STC) No. SA980NM.

Note: STC No. SA980NM pertains to installation of AVCO Lycoming Model TIO- and LTIO-540-J2BD engines.

Compliance: Required as indicated, unless previously accomplished.

To prevent a possible inflight engine fire, accomplish the following:

(a) Within the next 50 hours time-in-service, after the effective date of this AD, and thereafter at every 100 hours time-in-service, inspect, and replace, as necessary, the exhaust systems on both engines in accordance with Machen, Inc., Service Bulletin (SB) No. SB 66-018 dated June 5, 1987.

(b) The repetitive inspections specified in paragraph (a) are no longer required when the exhaust system has been modified in accordance with Machen, Inc., Service Bulletin (SB) No. SB 66-019, dated January 8, 1988.

(c) Within the next 50 hours time-in-service, after the effective date of this AD, and thereafter at every 100 hours time-in-service, inspect, and replace as necessary the oil lines on both engines in accordance with Machen, Inc., Service Bulletin (SB) No. SB 66-018, dated June 5, 1987.

(d) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(e) An equivalent means of compliance with this AD may be used if approved by the Manager, Modification Branch, ANM-190S, FAA, Northwest Mountain Region.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Machen, Inc., South 3608 Davison Boulevard, Spokane, Washington 99204 or may examine these documents at the Office of the Regional Counsel, Room 1558 at the FAA, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Washington, DC, on July 12, 1988.

**Daniel P. Salvano,**

*Acting Director, Office of Airworthiness.*

[FR Doc. 88-16126 Filed 7-18-88; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

### 37 CFR Part 1

**[Docket No. 80515-8115]**

### Requests for Identifiable Records

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking sets forth changes that the Patent and Trademark Office (PTO) is proposing to the rules governing requests for records not disclosed to the public as part of the regular informational activity of the PTO. The present rule sets out PTO Freedom of Information Act (FOIA) procedures. The proposed rule updates these procedures and specifies that FOIA requests will be processed in accordance with Department of Commerce regulations contained in Part 4 of 15 CFR (Public Information).

**DATE:** Comments must be submitted on or before September 20, 1988. No hearing will be held.

**ADDRESS:** Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, DC 20231 marked to the attention of Albin F. Drost.

**FOR FURTHER INFORMATION CONTACT:** Albin F. Drost by telephone at [703] 557-4035 or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

**SUPPLEMENTARY INFORMATION:** As presently written, 37 CFR 1.15 describes procedures for obtaining documents under the Freedom of Information Act (FOIA) that have been superseded. The purpose of this rule change is to bring the PTO FOIA procedures into conformity with the Department of Commerce FOIA rules. The proposed rule directly advises requesters that the PTO will follow the Department of Commerce rules for disclosure of information under FOIA.

**Other Considerations**

The proposed rule change will not have a significant impact on the quality of the human environment or the conservation of energy resources.

The proposed rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354), Executive Orders 12291 and 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed rule change will not have a significant adverse economic impact on a substantial number of small entities [Regulatory Flexibility Act, Pub. L. 96-354] because no increase in fees or paperwork should result from this rule change.

The Patent and Trademark Office has determined that this rule change is not a major rule under Executive Order 12291. The annual effect to the economy will be less than $100 million. There will be no major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The PTO has also determined that this notice has no federalism implications affecting the relationship between the national government and the states as outlined in Executive Order 12612

The rule change will not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., since no record keeping or reporting requirements within the coverage of the Act are placed upon the public.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Courts, Freedom of Information, Records.

For the reasons set out in the preamble and under the authority granted to the Commissioner of Patents and Trademarks by 35 U.S.C. 6, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations as set forth below:

## PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 6 unless otherwise noted.

2. Section 1.15 is proposed to be revised as follows:

**§ 1.15 Requests for identifiable records.**

(a) Requests for records, not disclosed to the public as part of the regular informational activity of the Patent and Trademark Office and which are not otherwise dealt with in the rules in this part, shall be made in writing, with the envelope and the letter clearly marked "Freedom of Information Request." Each such request, so marked, should be submitted by mail addressed to the "Patent and Trademark Office, Freedom of Information Request Control Desk, Box 8, Washington, DC 20231," or hand delivered to the Office of the Solicitor, Patent and Trademark Office, Arlington, Virginia. The request will be processed in accordance with the procedures set forth in Part 4 of Title 15, Code of Federal Regulations.

(b) Any person whose request for records has been initially denied in whole or in part, or has not been timely determined, may submit a written appeal as provided in § 4.8 of Title 15, Code of Federal Regulations.

(c) Procedures applicable in the event of service of process or in connection with testimony of employees on official matters and production of official documents of the Patent and Trademark Office in civil legal proceedings not involving the United States shall be those established in Parts 15 and 15a of Title 15, Code of Federal Regulations.

Date: May 24, 1988.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 88-16148 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-16-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 571

**[Docket No. 88-17]**

### Interpretations and Statements of Policy

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed interpretive rule.

**SUMMARY:** The Commission proposes an interpretive rule stating that common carriers or conferences may not require the production of a Department of Justice Business Review Letter prior to or as part of a service contract negotiation process with a shipper's association. The rule is intended to help eliminate unnecessary impediments to the operation of shippers' associations and the negotiation of service contracts.

**DATE:** Comments due August 18, 1988.

**ADDRESS:** Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Burgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** The Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* ("1984 Act") provides at section 8(c), 46 U.S.C. app. 1707(c), that ocean common carriers and conferences are authorized to enter into service contracts with shippers' associations, and at section 10(b)(13), 46 U.S.C. app. 1709(b)(13), that it is unlawful for a common carrier to refuse to negotiate with a shippers' association. The Conference Report accompanying the 1984 Act (H.R. Rep. No. 600, 98th Cong., 2d Sess. 38 (1984)) indicates that cooperative activities of shippers seeking shipping services would not be proscribed by the antitrust laws if the cooperating group lacks threatening market power. In a Notice dated May 15, 1984 on the Status of Shippers' Associations under the 1984 Act, the Commission announced its intention to address on an *ad hoc* basis matters and issues arising from shippers' association activities subject to the 1984 Act, rather than to issue industry-wide rules.

Subsequently, when petitioned to initiate a rulemaking proceeding to set forth procedures by which carriers could determine if an entity meets the statutory definition of "shippers' association," the Commission reiterated its policy against implementing an industry-wide regime of regulation of the formation and operation of shippers' associations. Order Denying Petition, 22 SRR 1624 (1985). It specifically rejected the suggestion that shippers' associations be required to produce for the benefit of carriers and conferences with which they are negotiating, any Department of Justice Business Review Letters they had received. The Commission suggested that the only protection a carrier or conference may need is a certification, obtained perhaps during the course of normal business negotiations, that the group meets the statutory definition of "shippers' association." The Commission also indicated that there is little potential for conference exposure to the antitrust laws, should a shippers' association with which a conference is dealing turn out not to be a true shippers' association, as long as the conference is acting in good faith. The Commission noted:

> Section 7(a)(2) of the [1984] Act [46 U.S.C. § 1706(a)(2)] * * * exempts from the antitrust laws any activity or agreement undertaken or entered into with a reasonable basis to conclude that it is pursuant to an effective agreement. Therefore, if a conference agreement contains language authorizing negotiations with shippers or shippers' associations, the conference would appear to have antitrust protection.

The Commission further explained that given section 10(b)(13)'s requirement that carriers *must* negotiate with shippers' associations, a carrier could claim the defense of implied immunity from the antitrust laws should its conduct be challenged.

In spite of these Commission pronouncements, as well as similar advice contained in speeches and Business Review Letters from the Department of Justice, shippers' associations continue to request Business Review Letters from the Department of Justice, allegedly because conferences refuse to negotiate with them unless they have such a letter. Thus, it appears that conferences may be adhering to the mistaken belief that they may inadvertently violate the antitrust laws by negotiating a service contract with an association itself violating the antitrust laws. Regardless of a conference's motive, a refusal to negotiate with a shippers' association pending receipt of documentation which has been established to be clearly unnecessary or immaterial constitutes a section 10(b)(13) prohibited act.

Because of the continuing nature of this problem, the Department of Justice, in order to alleviate the expenditure of its resources inherent in the preparation of reptitive Business Review Letters, has requested that the Commission take action to clarify its views on the subject. Therefore, in order to dispel any misunderstandings which apparently persist regarding shippers' associations' and carriers' risks of antitrust exposure while negotiating a service contract, the Commission proposes to issue an interpretive rule clarifying that carriers and conferences may not require shippers' associations to produce Business Review Letters prior to or as part of the negotiation process. An interpretive rule should help to eliminate unnecessary impediments to the

operation of shippers' associations and the negotiation of service contracts. Comments from interested parties limited to this narrow issue will be considered prior to issuance of a final interpretive rule.

**List of Subject in 46 CFR Part 571**

Antitrust Contracts, Maritime carriers, Shippers' associations.

Therefore, pursuant to 5 U.S.C. 553; and secs. 7, 8, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1706, 1707, 1709 and 1716) the Federal Maritime Commission proposes to add a new Part 571 to Subchapter D of Title 46 of the Code of Federal Regulations as follows:

## PART 571—INTERPRETATIONS AND STATEMENTS OF POLICY

**Authority:** 5 U.S.C. 553, 46 U.S.C. app. 1706, 1707, 1709, and 1716.

**§ 571.1 Interpretation of Shipping Act of 1984—Refusal to negotiate with shippers' associations.**

(a) Section 8(c) of the Shipping Act of 1984 ("1984 Act") authorizes ocean common carriers and conferences to enter into a service contract with shippers' associations, subject to the requirements of the 1984 Act. Section 10(b)(13) of the 1984 Act prohibits carriers from refusing to negotiate with a shippers' association. Section 7(a)(2) of the 1984 Act exempts from the antitrust laws any activity within the scope of that Act, undertaken with a reasonable basis to conclude that it is pursuant to a filed and effective agreement.

(b) The Federal Maritime Commission interprets these provisions to establish that a common carrier or conference may not require a shippers' association to obtain or produce a Business Review Letter from the Department of Justice prior to or as part of a service contract negotiation process.

By the Commission.

**Tony P. Kominoth,**

*Assistant Secretary.*

[FR Doc. 88-16215 Filed 7-18-88; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 88-330, RM-6210; RM-6304]**

### Radio Broadcasting Services; Gadsden and Holly Pond, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on two mutually-exclusive proposals, seeking the allotment of FM Channel 238A. The first, filed by Ron Hale seeks the allotment as a second local FM service to Gadsden, Alabama. The second proponent, American Communications and Marketing, Inc., seeks the allotment to Holly Pond, Alabama, as its first local broadcast service Reference coordinates used for Channel 238A at Gadsden, Alabama, are 34-01-06 and 86-01-00, while those used for Holly Pond, Alabama, are 34-09-03 and 86-36-39.

**DATES:** Comments must be filed on or before September 2, 1988, and reply comments on or before September 19, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel, as follows: Ron Hale, 5457 Woodford Drive, Birmingham, AL 35243 and Gary S. Smithwick, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M Street, NW., Suite 203, Wash., DC 20036 (counsel for American Communications and Marketing, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-330, adopted June 7, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16142 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-823, RM-6268]**

### Radio Broadcasting Services; Kawaihae, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Timothy D. Martz, which proposed to allot Channel 295A to Kawaihae, Hawaii, as its first FR service at coordinates 20-02-30 and 155-50-06.

**DATES:** Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-323 adopted May 31, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16135 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-321, RM-6270]**

## Radio Broadcasting Services; Volcano, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Timothy D. Martz, which proposes to allot Channel 299A to Volcano, Hawaii, as it first FM service at coordinates 19-26-00 and 155-15-42.

**DATES:** Comments must be filled on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-321, adopted June 1, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16140 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-331, RM-6356]**

## Radio Broadcasting Services; Duluth, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Minnesota Public Radio, proposing the allotment of FM Channel *247C2 to Duluth, Minnesota, as that community's eighth FM service. Petitioner also requests that the channel be reserved for noncommercial educational use. The coordinates for Channel *247C2 are 46-47-00 and 92-06-48. Canadian concurrence will be sought for the allotment of Channel *247C2 at Duluth.

**DATES:** Comments must be filed on or before September 2, 1988, and reply comments on or before September 19, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David G. Rozzelle, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue, NW., Suite 400, Washington, DC 20036 (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-331, adopted June 10, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16141 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-333, RM-6325]**

## Radio Broadcasting Services; Sartell, MN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Sartell FM, Inc., permittee of Channel 241A, Sartell, Minnesota, proposing the substitution of Channel 244C2 for Channel 241A. The coordinates for Channel 244C2 are 45-44-47 and 94-03-48. Canadian concurrence will be sought for the allotment of Channel 244C2 at Sartell.

**DATES:** Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, Fisher,

Wayland, Cooper & Leader, 1255-23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–333, adopted June 10, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–16138 Filed 7–18–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–325, RM–6316]**

## Radio Broadcasting Services; Ocean Springs, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Charles H. Cooper, licensee of Station WOSM(FM), proposing the substitution of FM Channel 276C2 for Channel 276A at Ocean Springs, Mississippi. Petitioner also requests modification of his license for WOSM(FM) to specify operation on Channel 276C2 in lieu of Channel 276A. The coordinates for Channel 276C2 are 30–24–34 and 88–42–23.

**DATES:** Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Bodorff, John Joseph McVeigh, Fisher, Wayland, Cooper and Leader, 1255 Twenty-third St., NW., Suite 800, Washington, DC 20037–1125, (Counsel to the petitioner).

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–325, adopted June 1, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–16139 Filed 7–18–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–329, RM–6355]**

## Radio Broadcasting Services; Boonville, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Big Country of Missouri, Inc., licensee of Station KSBX–FM, Boonville, Missouri, requesting the substitution of Channel 257C2 for Channel 257A at Boonville. The coordinates for Channel 257C2 are 38–46–29 and 92–33–22.

**DATES:** Comments must be filed on or before September 2, 1988, and reply comments on or before September 19, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Haley, Bader & Potts, Lee W. Shubert, 2000 M Street, NW., Suite 600, Washington, DC 20036–4574, (Counsel to the petitioner)

Big Country of Missouri, Inc., Richard Billings, President, Station KWRT/KDBX–FM, Radio Hill Road, Boonville, Missouri 65233.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–329, adopted June 10, 1988, and released July 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contracts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16143 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-332, RM-6390]**

## Radio Broadcasting Services; Egg Harbor City, NJ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition by Rodio Radio, Inc. proposing the substitution of Channel 285B1 for Channel 285A at Egg Harbor City, New Jersey, and the modification of its license for Station WRDR(FM) to specify operation on the higher powered channel. Channel 285B1 can be allotted to Egg Harbor City in compliance with the Commission's minimum distance separation requirements with a site restriction of 22.6 kilometers (14.1 miles) east to avoid a short-spacing to Station WQHQ, Channel 284B, Ocean City, Maryland. The coordinates for this allotment are North Latitude 39-29-05 and West Longitude 74-23-38. In accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest in use of the channel at Egg Harbor City nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by such interested parties.

**DATES:** Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James M. Weitzman, Kaye, Scholer, Fierman, Hays & Handler, 1575 Eye Street, NW., Washington, DC 20005 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-332, adopted June 7, 1988, and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16137 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-324, RM-6368]**

## Radio Broadcasting Services; Fort Bridger, WY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Jim Dunker, proposing the allocation of Channel 257A to Fort Bridger, Wyoming, as that community's first local FM service. The coordinates for the proposal are 41-10-06-110-22-54.

**DATES:** Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Jim Dunker, P.O. Box 34, Fort Bridger, Wyoming 82933 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-324, adopted May 31, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communicattions Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-16136 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-322, RM-6267]**

## Radio Broadcasting Services; Hali'Imaile, HI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Timothy D. Martz, which proposes to allot of Channel 288A to Hali'Imaile, Hawaii, as

its first local FM service at coordinates 20–52–16 and 156–20–38.

**DATES:** Comments must be filed on or before September 1, 1988, and reply comments on or before September 16, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or its counsel or consultant, as follows: Timothy D. Martz, 187 Brookmere Drive, Fairfield, Connecticut 06430, (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–322, adopted June 1, 1988 and released July 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–16180 Filed 7–18–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–268, RM–6141]**

## Radio Broadcasting Services; Chandler, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Brent R. Wookey to allot Channel 228A to Chandler, Indiana, as that community's first local broadcast service. Channel 228A can be allotted to Chandler in conformity with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules, utilizing city reference coordinates of 38–02–36 and 87–22–18.

**DATES:** Comments must be filed on or before August 15, 1988, and reply comments on or before August 30, 1988.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brent R. Wookey, 10 Woodland Drive, Bismarck, IL 61814.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88–269, adopted May 13, 1988, and released June 23, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140 Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subject in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–16181 Filed 7–18–88; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 53, No. 138
Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Governmental Processes and Committee on Judicial Review; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Committee on Governmental Processes and the Committee on Judicial Review of the Administrative Conference of the United States.

**Committee on Governmental Processes**

Date: Tuesday, July 26, 1988
Time: 4:00 p.m.
Location: Covington and Burling, 1201 Pennsylvania Avenue, NW., Washington, DC [Room 1205]

Agenda: The committee will meet to discuss a study by Professor Henry H. Perritt, Jr., of Villanova University School of Law, on computer-aided transmission and handling of regulatory documents. The committee will also consider a related draft report by Professor Susan G. Hadden of the LBJ School of Public Affairs, University of Texas, on the use of computers in connection with the Emergency Response and Community Right to Know Act (Title III of the Superfund Amendment of 1986).

Contact: David M. Pritzker 202–254–7065

**Committee on Judicial Review**

Date: Thursday, August 4, 1988
Time: 10:00 a.m.
Location: Administrative Conference of the United States Library 2120 L Street, NW., Suite 500, Washington, DC.

Agenda: The Committee has scheduled this meeting to continue discussion of (1) a draft recommendation on agency nonacquiescense in the decisions of courts of appeals, based on a study by Professors Samuel Estreicher and Richard Revesz (see 53 FR 24331, June 28, 1988); and (2) a revised draft recommendation on the forum for judicial review of preliminary challenges to agency action, related to a study by Professor Thomas Sargentich.

Contact: Mary Candace Fowler 202–254–7065

**Public Participation**

Attendance at the committee meetings is open to the public, but limtied to the space available. Persons wishing to attend should notify the contact person at least two days in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference fo the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

**Jeffrey S. Lubbers,**
*Research Director.*
July 15, 1988.

[FR Doc. 88–16306 Filed 7–18–88; 8:45 am]
BILLING CODE 6110–01–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 387]**

### Approval for Expansion of Foreign-Trade Zone No. 124, Gramercy, LA; Adjacent to the Gramercy Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign Trade Zones Board (the Board) adopts the following order:

Whereas, the South Louisiana Port Commission, Grantee of Foreign-Trade Zone No. 124, Gramercy, Louisiana, has applied to the Board for authority to expand its general-purpose zone to include an additional site (213 acres) in St. Charles Parish, Louisiana, adjacent to the Gramercy Customs port of entry;

Whereas, the application was filed on November 19, 1987, and notice inviting public comment was given in the **Federal Register** on November 30, 1987 (Docket 36–87, 52 FR 45475);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval based on a finding that the expansion would improve zone services in the Gramercy area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 19, 1987. The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 5th day of July 1988.

**Jan W. Mares,**
*Assistant Secretary of Commerce for Import Administraiton, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest.

**John J. Da Ponte, Jr.,**
*Executive Secretary.*

[FR Doc. 88–16211 Filed 7–18–88; 8:45 am]
BILLING CODE 3510–DS–M

**[Order No. 388]**

### Approval for Expansion of Foreign-Trade Zone No. 100, Dayton, OH, Within the Dayton Customs Port of Entry

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1984, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Greater Dayton Foreign-Trade Zone, Inc., Grantee of Foreign-

Trade Zone No. 100, Dayton, Ohio, has applied to the Board for authority to expand its general-purpose zone to include an additional site (39 acres) in downtown Dayton, within the Dayton Customs port of entry;

Whereas, the application was filed on November 25, 1987, and notice inviting public comment was given in the **Federal Register** on December 3, 1987 (Docket No. 38–87, 52 FR 54980);

Whereas, an examiners committee has investigated the application in accordance with the Board's regulations and recommends approval based on a finding that the expansion would improve zone services in the Dayton area; and

Whereas, the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby orders:

That the Grantee is authorized to expand its zone in accordance with the application filed November 25, 1987. The grant does not include authorization for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 7th day of July 1988.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.*

Attest.

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88–16212 Filed 7–18–88; 8:45 am]

BILLING CODE 3510–DS–M

## International Trade Administration

**[A–588–802]**

## Postponement of Preliminary Antidumping Duty Determination; 3.5" Microdisks and Coated Media Thereof From Japan

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b(c)(1)(A)).

Based on this request, we are postponing our preliminary determination as to whether sales of 3.5" microdisks and coated media thereof from Japan have occurred at less than fair value until not later than September 23, 1988.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, (202) 377–1769, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTAL INFORMATION:** On March 23, 1988 (53 FR 9464), we published the notice of initiation of an antidumping duty investigation to determine whether 3.5" microdisks and coated media thereof from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated that we would issue our preliminary determination by August 4, 1988.

On June 30, 1988, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 50 days, until September 23, 1988, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination concerning sales at less than fair value until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has done so. Accordingly, we are postponing the date of the preliminary determination until not later than September 23, 1988.

The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

July 14, 1988.

[FR Doc. 88–16208 Filed 7–18–88; 8:45 am]

BILLING CODE 3510–DS–M

**[A–427–009]**

## Industrial Nitrocellulose From France; Final Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration; Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On May 18, 1988, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from France. The review covers the only known manufacturer and/or exporter of this merchandise to the United States, and the period August 1, 1986 through July 31, 1987.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** J. David Dirstine or Phyllis Derrick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 18, 1988, the Department published in the **Federal Register** (53 FR 17740) the preliminary results of its administrative review of the antidumping duty order on industrial nitrocellulose from France (48 FR 36303, August 10, 1983). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

### Scope of the Review

Imports covered by the review are shipments of industrial nitrocellulose containing between 10.8 and 12.2 percent nitrogen. Industrial nitrocellulose is a dry, white, amorphous synthetic chemical produced by the action of nitric acid on cellulose. The product comes in several viscosities and is used to form films in lacquers, coatings, furniture finishes and printing

inks. These imports are currently classifiable under item number 445.2500 of the *Tariff Schedules of the United States Annotated* and under item numbers 3912.20.00 and 3912.90.00 of the *Harmonized System.*

The review covers Societe Nationale des Poudres et Explosifs ("SNPE"), the only known manufacturer and/or exporter of French industrial nitrocellulose to the United States, and the period August 1, 1986 through July 31, 1987.

**Final Results of the Review**

We invited interested parties to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as those presented in the preliminary results of review and we determine that a 4.39 percent margin exists for SNPE.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 4.39 percent shall be required for SNPE. For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after July 31, 1987 and who is unrelated to the reviewed firm, a cash deposit of 4.39 percent shall be required. These cash deposit requirements are effective for all shipments of French industrial nitrocellulose, entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice and will remain in effect until the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

**Jan W. Mares,**

*Assistant Secretary, for Import Administration.*

[FR Doc. 88-16209 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-061]

## Precipitated Barium Carbonate From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review and Revocation in Part

**AGENCY:** International Trade Administration/Import Administration; Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review and revocation in part.

**SUMMARY:** On April 28, 1988, the Department of Commerce published the preliminary results of its administrative review and intent to revoke in part on precipitated barium carbonate from the Federal Republic of Germany. The review covers one manufacturer/exporter of this merchandise to the United States and the period July 1, 1986 through April 3, 1987. The review indicates the existence of a *de minimis* dumping margin for the firm during the period.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Harry A. Patrick or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4477/5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 28, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 15263) the preliminary results of its administrative review and intent to revoke in part the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32884, June 25, 1981). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCo_3$), currently classifiable under item 472.0600 of the Tariff Schedules of the United States Annotated and under item 2836.6000 of the Harmonized System.

The review covers on manufacturer/exporter of West German precipitated barium carbonate to the United States, Kali-Chemie AG, and the period July 1, 1986 through April 3, 1987.

**Final results of Review and Revocation in Part**

We invited interested parties to comment on the preliminary results of the review and intent to revoke in part. We received no comments. The final results of review are unchanged from those presented in the preliminary results of review, and we determine that *de minimis* margins exist for the period July 1, 1986 through April 3, 1987.

For the reasons set forth in the preliminary results of review and intent to revoke in part, we are satisfied that there is no likelihood of resumption of sales at less than fair value by Kali-Chemie. Accordingly, we revoke in part the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. This revocation applies to all unliquidated entries of this merchandise manufactured and exported to the United States by Kali-Chemie AG and entered, or withdrawn from warehouse, for consumption on or after April 3, 1987, the date of our tentative determination to revoke the order in part. The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries.

For any future shipments from the one remaining known manufacturer/exporter not covered in this review, the cash deposit will continue to be the rate published in the final results of the last administrative review for that firm (50 FR 16330, April 25, 1985).

For any future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after April 3, 1987, and who is unrelated to the reviewed firm or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751 (a)(1) and (c) of the Tariff Act (19 U.S.C. 1675 (a)(1), (c)) and §§ 353.53a and 353.54 of

the Commerce Regulations (19 CFR 353.53a and 353.54).

Jan W. Mares,

*Assistant Secretary for Import Administration.*

Date: July 8, 1988.

[FR Doc. 88-16210 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-701]

## Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Italy

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have determined that certain granite products from Italy are being, or are likely to be, sold in the United States at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring, or are threatening material injury to, a United States industry.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Wilson (202) 375-5288 or Steven Lim (202) 377-4087, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

### Final Determination

We have determined that certain granite products from Italy are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

### Case History

Since the last **Federal Register** publication pertaining to this investigation (the Notice of Preliminary Determination of Sales at Less than Fair Value (53 FR 6021, February 29, 1988)), the following events have occurred.

On March 2, 1988, respondents requested that we postpone the final determination until June 20, 1988. On March 10, 1988, in accordance with section 735(a)(2)(A) of the Act, we postponed the final determination until June 20, 1988 (53 FR 8479, March 15, 1988).

Verification of the responses was conducted from March 14 through April 1, 1988. A public hearing was requested. This request was subsequently withdrawn. Final comments were received from petitioner and respondents.

On June 2, 1988, respondents requested that we postpone the final determination until not later than 135 days after the date of publication of our preliminary determination. On June 9, 1988, in accordance with section 735(a)(2)(A) of the Act, we postponed the final determination until July 13, 1988 (53 FR 22369, June 15, 1988).

### Scope of Investigation

The products covered by this investigation are certain granite products. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34cm) in thickness and include the following: Rough-sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are provided for under *TSUSA* item number 513.7400 and under *HS* item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

### Period of Investigation

For rough slabs, slabs not cut-to-size, and tiles, the period of investigation (POI) is March 1, 1987 through August 31, 1987. For cut-to-size slabs or projects, the POI is January 1, 1987 through August 31, 1987, for projects completed by November 30, 1987. In order to include additional sales of some larger projects, we requested data on projects sold as early as July 1986. (See Comment 9.)

### Fair Value Comparisons

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared the United States price with the foreign market value as specified below.

For the reasons cited below, we have determined, in accordance with section 776(b) of the Act, that use of best information otherwise available (BIA) is appropriate for all sales by F.lli Guarda S.p.A. (Guarda) and for sales of slabs not cut-to-size by Pisani Brothers S.p.A. (Pisani).

With respect to Guarda, we were unable to verify almost all sales price information, including charges or adjustment information, as it was submitted in the response. We were also unable to verify any of the cost information submitted for constructed value calculations. During verification of costs, the company was unable to explain the methodology used in its response. Additionally, the company could not provide support for its calculations. (See Comment 8).

For these reasons, we have assigned Guarda a BIA rate that is based on a combination of adjusted constructed values as found in the petition, data collected during the Guarda verification relative to sales prices to the United States, and verified information submitted by other producers. We could not use petition data exclusively for our BIA rate as it was apparent that various parts of the constructed value computations found in the petition required adjustment due to assumptions which are invalid for the Italian granite industry. Specifically, the petition used actual size of blocks rather than the smaller commercial size in which grantie is sold. The petition's calculations included freight which is typically paid by trading companies in the Italian market. In addition, the petition including packing in determining SG&A and profit in its constructed value calculation, both of which are inappropriate. Furthermore, as the U.S. prices for projects shown in the petition did not specify material thicknesses, they could not be reasonably compared to our adjusted, BIA constructed values. Finally, the petition established rates only for cut-to-size sales while Guarda sold both cut-to-size and slabs in the U.S. during the POI.

The use of certain information collected on-site during the Guarda verification for BIA should not be construed as a willingness on the part of the Department to reconstruct responses for respondents at verification.

With regard to Pisani's sales of slabs not cut-to-size, the cost of production information supplied by this company could not be reconciled to company documentation pertaining to slab production. (See Comment 8). For this reason, we have used BIA to determine foreign market value for these sales. BIA is based on verified information for other companies, as the petition contained no information on the home market price of slabs. (See Comment 8.)

### United States Price

Except where BIA was used, we based United States price for all U.S. sales on purchase price in accordance with section 772(b) of the Act. These sales were made directly to unrelated customers in the United States prior to

importation. Under these circumstances, section 772(b) clearly requires that purchase price be used for determining the U.S. sales price.

We calculated purchase price based on the ex-factory, f.o.b., c.i.f., or c.i.f., duty paid, packed prices to unrelated purchasers in the United States. We made deductions for foreign inland freight and handling, ocean freight, marine insurance, U.S. duty and inland freight, as appropriate.

**Foreign Market Value**

For rough slabs, slabs not cut-to-size, and tiles, we established separate categories of "such or similar" merchandise, pursuant to section 771(16) of the Act, on the basis of form of material, type of stone, dimension, finish, edgework, anchoring and assembly work.

Where there were no identical products in the home market with which to compare products sold in the United States, we made adjustments to similar merchanise to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act. These adjustments were based on differences in the costs of materials, direct labor and directly related factory overhead.

The petitioner alleged that home market sales of slabs not cut-to-size were at prices below the cost of producing the merchandise. Having determined that these allegations were sufficiently documented, the Department initiated a cost investigation for Camplonghi Italia S.p.A. (Campolonghi), and Freda S.p.A. (Freda), Henraux S.p.A. (Henreaux), Euromarble S.p.A. (Euromarble), Formai and Mariani S.r.l. (Formai), and Psiani. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. The cost of production calculation for each respondent was adjusted for those costs which were not appropriately quantified or valued in the response. Except for certain types of stone sales by Euromarble, where we used constructed values, we found sufficient home market sales above the cost of production to allow us to use these prices for foreign market value, in accordance with section 773(a)(1)(A).

For sales of rough slabs, face-finished slabs not cut-to-size, and tiles, we calculated foreign market value based on unpacked prices to unrelated purchasers in the home market, in accordance with section 773(a) of the Act. We made deductions, where appropriate, for inland freight. We made adjustments for differences in circumstances of sale for credit expenses pursuant to § 353.15(b) of our regulations, and for commissions on sales in the United States and in the home market pursuant to § 353.15(c) of our regulations. Where appropriate, we used indirect selling expenses to offset commissions. We deducted home market packing costs and added the packing costs incurred on sales to the United States.

For cut-to-size projects, we calculated the foreign market value based on constructed value in accordance with section 773(e) of the Act because there were no comparable sales in the home market by producers being investigated. The constructed value was based on the costs for the cut-to-size projects sold in the United States.

In calculating general expenses for constructed value, we used U.S. selling expenses for the projects since these were such unique items that there were no comparable home market or third country sales.

Where the amount for general expenses was less then ten percent of the cost of materials and fabrication, we used the statutory minimum of ten percent. Where the amount for profit was less than eight percent of the sum for the costs of materials, fabrication and general expenses, we used the statutory minimum of eight percent. We also added the cost of U.S. packing.

When calculating constructed value, the respondents' submissions were used, except when all costs were not appropriately quantified or valued.

The following adjustments were made for each respondent:

*For Campolonghi:*

(1) The block costs were reduced by the net exchange gains on purchases.

(2) Cost of production was increased to reflect the accelerated method of depreciation used in the respondent's accounting system.

(3) The slabbing waste was changed from the overall 7 mm per cut to the actual slabbing waste computed by granite type.

(4) Polishing costs were increased to reflect the cost from unrelated suppliers based on commercial square meters.

(5) Special works were adjusted, based on differences in quantities obtained at verification.

(6) The dimensioning waste was revised to reflect the amount computed for each grant type.

(7) General expenses were changed from the statutory minimum of 10 percent to include the actual general, administrative, and interest expenses of the company and the U.S. selling expenses for the projects. For calculating the cost for producing slabs, home market selling expenses were used.

(8) Interest income related to short-term investments was included as an offset to interest expenses.

(9) The costs incurred by the related company, Granite Marketing Associates (GMA), were used for the blocks purchased by Campolonghi in calculating the cost of producting Campolonghi's slabs.

*For Freda:*

(1) The block and fabrication costs used to establish the costs of Capao Bonito granite in the respondent's submission were changed to the price paid for finished slabs, since the only block which was purchased by Freda was sold one month later by the company.

(2) The slabbing waste was changed from the overall 7 mm per cut to actual slab waste for each specific type of granite.

(3) The price charged by a related company for sawing was adjusted to reflect a market value based on invoices of an unrelated fabricator.

(4) The material costs for certain slab sizes, which, in the response, had been based on the block costs, were revised to reflect the actual cost of slabs purchased because these sizes had not been sawn by the company.

(5) The price of slabs purchased from Campolonghi were revised to reflect the market price for the slabs.

(6) The dimensioning waste was revised to reflect an average dimensioning waste for the types of granite used in the projects under investigation.

(7) General expenses were revised to include the actual general and administrative expenses, interest, and U.S. selling expenses for the projects. For calculating the cost of producing slabs, home market selling expenses were used.

*For Henraux:*

(1) The block costs were revised to reflect the cost of the actual granite blocks used in the cut-to-size projects.

(2) Where appropriate, general expenses were changed from the statutory minimum of 10 percent to include the actual general and administrative expenses, interest, and U.S. selling expenses for the projects. For calculating the cost of producing slabs, home market selling expenses were used.

*For Savema S.p.A. (Savema):*

(1) The slabbing waste was adjusted to reflect the actual slabbing waste for the specific types of granite the Department investigated during the course of the verification. The

Department calculated an average slabbing waste factor for those granite types which were included in project under investigation, but which the Department was unable to review during the verification.

(2) Factory overhead costs for the flaming and polishing processes were revised to reflect the losses which occur during the dimensioning stage.

(3) General expenses were changed from the statutory minimum of 10 percent to the actual general and administrative expenses, interest expenses of the company, and the U.S. selling expenses for the projects.

*For Formai and Northern Granites S.r.l. (Northern Granites):*

(1) The cost of manufacturing, used as the basis for allocating general, administrative, and interest expenses, was revised by reclassifying certain costs which were not considered by the Department to be part of the manufacturing costs. U.S. selling expenses were included for the projects. For calculating the cost for producing slabs, home market selling expenses were used.

*For Pisani:*

(1) For projects using Balmoral Red granite, we used the weighted-average cost of the blocks of Balmoral Red rather than the cost submitted in the response, which was based on the lowest-priced block, because the company was unable to identify the actual blocks used in the projects.

(2) The Department used BIA for slabbing waste because the response waste figures could not be verified.

(3) Sawing costs were increased by the average of the "additional charges" noted on the sawing invoices which were reviewed during verification.

(4) The verified average dimensioning waste was used instead of the dimensioning waste submitted in the response.

(5) The actual lease expense for the company's computer equipment was included instead of the imputed expenses submitted in the response.

(6) Certain costs, such as expenses for production consultants, outside drafting, architectural consulting, quality control, and salaries and termination pay funds for the production manager, project manager, and draftsman, were included in the cost of manufacturing and deducted from the general and administrative expenses.

(7) The U.S. selling expenses were included in general expenses for the projects. For calculating cost of producing slabs, home market selling expenses were used.

(8) General and administrative expenses and interest expenses were based on the amounts on the financial statements, appropriately adjusted.

*For Euromarble:*

(1) The material cost and fabrication costs were revised to reflect the cost of blocks and special works resubmitted by the respondent at the verification for some of the cut-to-size projects.

(2) The dimensioning waste factor was revised to reflect a weighted-average waste factor.

(3) Factory overhead was revised to include certain expenses, such as rent and other industrial costs, in the calculation of overhead expenses.

(4) General and administrative expenses, including financial expenses, were revised to reflect the information on their 1987 financial statement.

**Currency Conversion**

We made currency conversions as of the date of sale in accordance with section 353.56(a)(1) of the Regulations. All currency conversions were made at the rates certified by the Federal Reserve Bank.

**Verification**

As provided in section 776(a) of the Act, and except where noted, we verified all information used in reaching the final determination in this investigation.

**Interested Party Comments**

*Comment 1:* Henraux and Savema state that the Department should not make an adjustment for commissions paid to their related companies.

*DOC Position:* We agree. At verification, the Department ascertained that these commissions were paid to related companies. Therefore, we made no adjustment for these commissions in our final determination.

*Comment 2:* Henraux and Savema contend that the Department may not offset commissions paid on home market slab sales with indirect selling expenses incurred in Italy for sales to the United States.

*DOC Position:* We disagree. The Act and regulations place no geographic test on the commission offset. In our preliminary and final determinations, the Department offset commissions paid on home market sales with indirect selling expenses incurred in connection with sales to the U.S. market, including those incurred in Italy. The Department did not use indirect selling expenses incurred in home market sales of slabs to offset commissions paid on sales in the same market. See *Silver Reed* v. *United States,* Slip Op. 88-37 (CIT, March 18, 1988).

*Comment 3:* Campolonghi, Formai, Henraux and Savema point out that the Department erred in using 1987 exchange rates for certain sales of cut-to-size projects made in 1986.

*DOC Position:* We agree. In its final determination, the Department has used the proper exchange rates for these sales.

*Comment 4:* Euromarble and Henraux point out that, for certain of their slab sales, the Department erred in calculating a single weighted-average foreign market value for each type of stone, regardless of thickness, in our preliminary determination.

*DOC Position:* We agree. The Department has corrected this calculation for purposes of our final determination by calculating individual weighted-average foreign market values for different thicknesses of stone.

*Comment 5:* Respondents contend that the Department should calculate separate margins for various groups of companies which the Department believes are related to Campolonghi and Formai.

*DOC Position:* Although not expressly required by the Act, the Department has a long-standing practice of calculating a separate dumping margin for each manufacturer or exporter investigated. The issue, then, is whether companies of the Campolonghi group and companies of the Formai group constitute separate manufacturers or exporters for purposes of the dumping law. We believe that, under the facts present on the record, the companies within each of these groups of companies are not separate, and it is appropriate to calculate a single, weighted-average margin for each group of firms.

The administrative record establishes close, intertwined relationships between the companies within both the Campolonghi group and the Formai group. Each group is predominantly owned by a small group of individuals and the companies in each group share common boards of directors. Transactions have taken place between companies within each of these groups during the period of investigation. The various production facilities within each group share the same type of equipment, so it would not be necessary to retool a particular plant's facilities before implementing a decision to restructure manufacturing priorities within either group. Given these facts, we believe it would be incorrect to conclude that each of these entities constitutes separate manufacturers or exporters under the dumping law. Therefore, we have treated the Campolonghi group of companies and the Formai group of companies each as a single entity for

purposes of determining a dumping margin.

*Comment 6:* Respondents contend that the Department's final determination should specify, by company, what percentage of sales by each respondent was made at less than fair value. Respondents believe that this would assist the ITC in its analysis of injury from imports of merchandise sold at less than fair value.

*DOC Position:* We believe this unnecessary. We always make all privileged and business proprietary information in our files available to the ITC, if requested.

*Comment 7:* Respondents argue that the Department may not use any of petitioner's confidential data as BIA since petitioner has not submitted this data in accordance with the Department's requirements. Respondents also argue that petitioner has not properly summarized its confidential data.

*DOC Position:* We have determined that petitioner has properly submitted its business proprietary data. Where appropriate, we have used data provided in the petition as BIA.

*Comment 8:* Petitioner argues that because respondents' data contain numerous errors, inconsistencies and omissions, the Department should base its final determination on the BIA, which is the data submitted by petitioner.

*DOC Position:* Except for all sales by Guarda and sales of slabs not cut-to-size by Pisani, the Department considers the responses of the other companies to be verified. We have reported in our verification reports all significant issues raised at the verification of these other companies, our verification methods, and discrepancies found. We do not, however, consider the errors, inconsistencies and omissions we found to be of a frequency or magnitude to warrant rejecting the data submitted by these companies and using petitioner's data as BIA.

With respect to Guarda, during our attempted verification of its sales and cost responses, we found that the extent of the errors, inconsistencies and omissions in these responses did not permit satisfactory analysis or verification. For example, with regard to Guarda's cost response:

*1. Materials*

—materials could not be traced to actual inputs for any of the projects;

—certain costs, e.g., bank charges, were omitted;

—slabs taken out of inventory were not included in the material costs;

—the blocks included in one project were removed from inventory one day before the project was shipped.

*2. Sawing*

—five different rates of sawing waste were used by the respondent in its response, depending upon the hardness of the stone. However, during verification, the company calculated an average rate;

—the average rate used was an estimate for 1987 since actual 1987 data was not available. Guarda estimated that the slabbing waste in 1987 was lower than in 1986.

*3. Fabrication*

—the costs for honing, dimension cutting, and special works were based on estimated production and usage rates, which the company could not support;

—costs calculated during verification did not agree with the response nor could these costs be verified;

—subcontractors' costs for extra thicknesses were not included;

—special works were not included in the response. The company provided estimates during verification.

*4. Dimension Waste*

—the company could not explain the dimension waste calculation used in the response;

—a recalculated dimension waste factor was based on estimates of the "cost of making a polished edge in special work." The company could not explain the relationship between these costs and dimensioning costs, nor could they support them.

Regarding Guarda's sales response:

1. Guarda waited until verification to revise the originally reported amounts for quantity and value of sales.

2. On three out of five projects under investigation, Guarda miscalculated the total volume of the investigated granite. This resulted in discrepancies in the sales price of three sales.

3. Guarda could not explain its reported packing expenses.

4. Reported credit expenses were based on the terms stated on the invoice rather than the actual credit period.

5. Guarda used the wrong interest rate to calculate credit expenses.

6. Guarda failed to provide any explanation of indirect selling expenses until verification. In addition to the questionnaire, this information was specifically requested by the Department in deficiency letters on November 24 and December 11, 1987.

For costs of Pisani's slabs not cut-to-size, the following discrepancies were noted regarding its cost response:

1. Invoices for block purchases used to establish the cost of materials were dated after the sawing and finishing invoices and, therefore, could not have been the actual invoices for the blocks used to produce the slabs in the reported sale.

2. Invoices used for sawing and finishing were for blocks other than those identified in the response.

3. Invoices for sawing and finishing could not be reconciled to the company's records.

4. Sawing costs for one sale were based on November 1985 costs. No slabs were in inventory for this type of granite as of June 30, 1986. The origin of the materials that were used could not be explained.

5. The same invoice as used to calculate the cost of production for slabs sold in the U.S. and for slabs sold in Italy.

Faced with responses containing numerous fundamental flaws, the Department could not properly base its determination on the information submitted by Guarda or information on cost of production submitted by Pisani. It is not acceptable, in such situations, that the Department bear the responsibility for attempting to identify and perform the numerous and substantial recalculations necessary for the development of accurate sales and cost of production data. Such a role would place too great a burden on the resources of the Department under the time constraints and procedural framework of this investigation. As stated in *Photo Albums and Filler Pages from Korea; Final Determination of Sales at Less Than Fair Value* (50 FR 43754, October 29, 1985): "[I]t is the obligation of respondents to provide an accurate and complete response prior to verification so that the Department may have the opportunity to fully analyze the information and other parties are able to review and comment on it." A respondent cannot shift this burden to the Department by submitting incomplete and inaccurate information and expect the Department to correct its response during the course of verification. Verification is intended to establish the accuracy of a response rather than to reconstruct the information to fit the requirements of the Department or to perform the recalculations necessary to develop accurate information. Nevertheless, as discussed above in the "Fair Value Comparisons" section of this notice due to lack of information in the petition, certain information collected at verification was used as BIA.

*Comment 9:* Petitioner asserts that the Department has not considered at least 60 percent of exports from Italy during the period of investigation (POI) as required by § 353.38(a) of the Commerce Regulations, 19 CFR 353.38(a).

*DOC Position:* Under normal circumstances, we do look at 60 percent of the dollar value of exports. However, given the fact that many of the sales under investigation consisted of long-term projects for which constructed values had to be calculated, the Department believed it was appropriate to amend its typical practice to fit the somewhat atypical circumstances of this case. After analyzing the constructed value submissions for cut-to-size granite slab projects, it was apparent that respondents had not furnished actual cost data for almost all of their larger project sales made during the POI (March 1, 1987 through August 31, 1987). This was because these projects had not been completed by the time the responses were due. On the basis that such data might not be sufficently representative, we extended the POI back to January, 1987 and requested respondents to report constructed value information for all projects completed by November 30, 1987. Moreover, to capture the actual costs of some larger cut-to-size porjects (i.e., those valued at approximately $500,000 or more), we also requested information on some projects sold as early as July 1986. Consequently, our POI for cut-to-size granite slabs is January 1, 1987 through August 31, 1987 plus, some larger projects sold as early as July, 1986, if completed by November 30, 1987. By using these as our criteria, we have captured over 60 percent of total sales completed within the POI.

*Comment 10:* Petitioner argues that, because the U.S. dollar has declined against the Italian lira, the Department should include currency exchange costs as a direct expense for sales to the United States.

*DOC Position:* We have determined that there is no basis in the Act or in the regulations for such an adjustment. Section 353.56(a)(1) of our regulations stipulates that any necessary conversion of a foreign currency into its equivalent in United States currency will be "as of the date of purchase or agreement to purchase, if the purchase price is an element of the comparison." Therefore, it is not the Department's policy to take into account differences in home market currency revenue based on currency fluctuations in calculating direct selling expenses, regardless of whether the fluctuations are favorable of unfavorable.

*Comment 11:* Petitioner argues that the Department should compare U.S. slab sales to verified constructed values.

*DOC Position:* We disagree. Since we found that all respondents, except for Euromarble in certain instances and Pisani and Guarda, had sufficient home market sales at prices above their costs of production, we have no reason to make comparisons on anything other than a price-to-price basis.

*Comment 12:* Petitioner has alleged that processors related to the respondents are "dumping" their input materials and fabrication services. Petitioner contends, therefore, that the Department should initiate cost investigations of these processors.

*DOC Position:* We disagree. For any element of value included in constructed value, section 773(e)(2) of the Act requires the Department to determine whether prices charged by related parties fairly reflect the amount usually reflected in sales to unrelated parties in the market under consideration. Therefore, when these materials and fabrication services are provided at market rates, the Act neither requires nor allows us to do a cost analysis of these inputs.

*Comment 13:* Respondents state that the Department must eliminate from its analysis the nine percent additional slab loss that it presumed existed with respect to Henraux and the other respondents and which was applied in the preliminary determination.

*DOC Position:* The Department verified waste losses for the respondents who used a slab waste factor and dimensioning waste factor as a basis to calculate their total cost of production for the projects. These companies were Campolonghi-Freda, Savema, Euromarble, Pisani and Guarda. In all cases, except Guarda (whose response could not be verified), the slabbing waste factor and/or the dimensioning waste factor, which was documented at verification, was markedly higher than the losses reported in the response. Therefore, the Department used the actual waste losses obtained at verification as a basis for its final determination.

**General Constructed Value Comments**

*Comment 14:* The respondents argue that the Department incorrectly used imputed credit costs for calculating general expenses in the preliminary determination. They contend that the Department is bound to use actual expenses in its constructed value. The respondents cite cases and determinations which they allege support this position. They are *Hercules Inc. v. United States, Al Tech Speciality Steel Corp. v. United States, Industrial Nitrocellulose from France, Tubeless Steel Disc Wheels from Brazil, Titanium Sponge from Japan* and *Oil Country Tubular Goods from Israel* in support of this position. The respondents further state that actual expenses should be used in the final determination.

The petitioner states that it is essential for the Department to include imputed credit expenses in the constructed value calculations, because such expenses are imputed in the U.S. price. The petitioner further states that the Department's failure to include such imputed credit expenses would result in an improper comparison.

The petitioner claims that the Department should follow its usual methodology and include the "credit expense" as a selling expense in the constructed value.

*DOC Position:* The Department followed its usual methodology and included an imputed credit expense as part of selling expenses in constructed value. This practice was recently upheld in *Silver Reed v. United States,* Slip. Op. 88-5 (CIT, January 12, 1988). In the Department's view, this credit expense reflects the costs incurred by the company (costs of debt and equity) in financing its accounts receivable for the product. To avoid double-counting, the portion of actual interest expense attributable to accounts receivable was deducted from total interest charges.

*Comment 15:* The respondents argue that the Department must use the home market selling expense because section 773(e) of the Act requires that general expenses be use "equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation."

Petitioner claims that U.S. selling expenses should be used because (1) home market selling expenses have not been verified, and (2) the sales in the home market for the products under investigation are very dissimilar from the U.S. sales.

*DOC Position:* We agree that generally the Department should use home market selling expenses in calculating constructed value. With respect to sales of cut-to-size projects, however, the Department determined that, due to the uniqueness of the merchandise, there was no comparability between sales in the home market and sales in the U.S. Therefore, the Department used the U.S. selling expenses as a surrogate for each individual U.S. project for which a constructed value was computed. The

Department used home market selling expenses for slabs.

**Constructed Value/Cost Comments—Henraux**

*Comment 16:* The petitioner argues that Henraux's raw block costs are underreported because Henraux used the moving average cost method in its response. The petitioner further states that the Department must use the respondent's highest raw material costs for the final determination.

Henraux argues that changing from the moving average inventory method to the cost for specific blocks used for cut-to-size projects actually reduced Henraux's material costs.

*DOC Position:* The moving average inventory method was not used because it averaged the costs of the current period with costs from prior periods. Using Henraux's accounting system, we were able to identify specifically the blocks used on each cut-to-size project. Therefore, the Department used the cost of the specifically identified blocks for the final determination. The effect was to increase the cost of some projects and to decrease the cost of others.

*Comment 17:* The petitioner argues that, if Henraux used an inflated allocation of cost to marble and to granite with thicknesses over 2½ inches, it would unjustifiably reduce the constructed value for the projects.

*DOC Position:* The allocations of the costs for marble and granite with thicknesses over 2½ inches for the projects were reviewed at verification. We found no inflated allocations.

*Comment 18:* The petitioner argues that costs of production of Henraux's related company, Lavorazioni, rather than the invoiced prices, should be used for the cut-to-size projects. The petitioner further states that comparing related party invoices to unrelated party invoices is questionable because petitioner believes that the fabrication input of unrelated parties is being provided at less than cost. Respondent states that all Lavorazioni sales are to Henraux. The respondent argues that for purposes of constructed value, the related party prices should be used if they reflect prevailing market prices offered by other suppliers.

*DOC Position:* For purposes of constructed value, we have used the transfer prices of the related company, in accordance with section 773(e)(2) of the Act, since these prices were comparable to prices charged by unrelated suppliers.

For purposes of the cost of production of slabs, we would ordinarily use the cost of the input from related companies. However, since the transfer prices presented in Henraux's response were equivalent to the cost of production, the Department did not revise the response.

*Comment 19:* The petitioner argues that the sawing loss attributed to the cost of production for Henraux's granite slabs appears to be unsubstantiated, theoretical waste and does not account for breakage or second quality slabs.

Henraux states that it accounted fully for all waste costs.

*DOC Position:* Henraux measures the usable size of the granite blocks and computes the actual sawing waste for the slabs in its records. Therefore, the actual sawing waste was used in the final determination for the cost of production for slabs, rather than the theoretical waste reported in its original response.

*Comment 20:* The petitioner argues that the administrative record indicates that the cost of dimensioning waste for the cut-to-size projects has not been verified and, therefore, the Department should use the best information otherwise available.

*DOC Position:* Total material cost was used for the cut-to-size projects. Therefore, the Department did not need to measure the dimension waste in calculating constructed value.

*Comment 21:* Petitioner questions whether the factory overhead for Henraux was calculated properly. Petitioner argues that the overhead assigned to the projects appears to be low and, therefore, the highest, verified factory overhead amount should be used. Henraux states that it accurately included all overhead costs in its constructed value calculations.

*DOC Position:* The factory overhead in Henraux's response, including quality control, maintenance, depreciation, yard handling, block selection, and indirect salaries, was assigned to various aspects of the cost of cut-to-size projects such as block cost and surface treatment. Other factory overhead items, such as internal transport, handling, insurance, and consumable material, were assigned to the projects and listed in the costs separately. Therefore, no adjustments were necessary.

*Comment 22:* Petitioner states that the respondent has not used the most similar merchandise for the difference in merchandise calculations and, therefore, the petitioner's data should be used.

Henraux has submitted several alternative product comparisons.

*DOC Position:* We disagree with petitioner as regards use of BIA. For purposes of comparisons, we have used that slab, not cut-to-size, found to be most similar to the slab sold to the United States. This comparison is different from that made at the time of our preliminary determination.

*Comment 23:* Petitioner argues that all costs may not be included for one project for which the material was sold to an independent contractor and then repurchased as completed cut-to-size pieces. The respondent states that all costs of the project were included in the constructed value.

*DOC Position:* We agree with the respondent. At verification, we determined that granite blocks were purchased for the project. A portion of the blocks were sawn into slabs and polished prior to the sale of the slabs and the sale of the remaining blocks to an unrelated supplier. The amount received from the supplier was deducted only from the material cost (not the total value which would include the costs of material and fabrication) to arrive at a negative balance for the material cost. However, since the cost of processing by Henraux and Henraux Lavorazioni and the cost of repurchasing the finished product from the unrelated supplier were included in total cost, the amount received from the sale of the slabs and blocks should have been deducted from the total cost. The net effect would have been the same without giving the appearance of obtaining a profit on the sale of material.

**Constructed Value/Cost Comments—Campolonghi**

*Comment 24:* The petitioner argues that the Department should use the market price of the granite block purchased by Campolonghi from its related company, Granite Marketing Associates (GMA). The market price should be the price charged to unrelated customers. The petitioner further states that distribution costs should not be deducted from the sales price because the statute requires that every element of value reflected in sales to unrelated parties be included in the price to unrelated parties.

The respondent states that commissions and handling fees incurred for sales to unrelated companies are not incurred for sales to Campolonghi and, therefore, should be deducted from the sales price to unrelated companies when comparing the prices.

*DOC Position:* We do not need to address this issue. The application of either measure of price has no impact on the margins for the projects.

*Comment 25:* The petitioner states the Department must use the highest block prices verified for Campolonghi, because the Department was unable to obtain permission from the Swiss Ministry of Foreign Commerce to verify

the cost of blocks purchased and sold to Campolonghi by GMA.

Campolonghi states that both it and GMA have cooperated fully in attempting to obtain permission to verify the records in Switzerland. Campolonghi further states that it should not be penalized for circumstances over which it has no control.

*DOC Position:* We were granted permission to verify the cost and sales records of GMA in Switzerland and based the final determination on verified data.

*Comment 26:* The petitioner argues that the Department must include all costs of GMA for the granite blocks obtained from them for the cost of production for slab sales.

Campolonghi argues that the transfer price should be used for the cost of production. The respondent states there is no legal or logical justification for the Department using related party prices in its cost of production analysis but not in its constructed value calculations. The respondent refers to *Washington Red Raspberry Commission v. United States*, 657 F. Supp. 537 (CIT, 1987).

*DOC Position:* The Department used the costs incurred by GMA in computing the cost of production for the slab sales. The constructed value related party provision contained in section 773(e)(2) is not directly applicable to cost of production calculations, because, by its terms it only refers to constructed value calculations. See, *Mirrors in Stock Sheet and Lehr End Sizes from the Federal Republic of Germany* 51 FR 43403 (1986). The Department based its cost of production calculations on "generally accepted accounting principles." According to these principles, when one company is at least 50 percent owned by another company, the costs are based on the consolidated financial information of the two companies.

*Comment 27:* The petitioner argues that a certain unaccounted for amount of money in the respondent's revised methodology for special works should be allocated to the granite sold during the period of investigation.

*DOC Position:* We have adjusted the "special works" in the response in accordance with the revised calculation obtained at verification. Approximately one half of the difference was not assigned to specific special works operations. This amount was so insignificant that it would have no effect on the cost of the special works.

*Comment 28:* Petitioner states that the highest verified dimension waste factor must be used for the final determination, rather than the amounts provided by Campolonghi prior to verification.

*DOC Position:* During the course of the verification, actual dimensioning waste for each granite type used in the projects was obtained. This information was tested against underlying documentation and was used in the final determination. For those granite types for which a specific waste loss was not ascertained, we applied the weighted-average waste loss obtained at verification.

*Comment 29:* The petitioner argues that the Department should use the highest verified sawing waste factor in the final determination.

*DOC Position:* Calculations related to this loss factor were tested extensively against underlying documentation for two of the stone types and verified. Therefore, the sawing waste factor computed for each stone type was used in the final determination.

*Comment 30:* The petitioner argues that the polishing cost for the final determination must be based on commercial square meters instead of actual square meters.

*DOC Position:* We agree and have used the unit cost based on commercial square meters in the final determination.

*Comment 31:* Petitioner argues that the Department should not accept the deduction from selling, general and administrative expenses of legal expenses that the respondents incurred in the antidumping investigation.

Respondent argues these expenses should not be included because they relate to future sales and not to sales under investigation. The respondent refers to *Industrial Nitrocellulose from France* (51 FR 43230, December 1, 1986) and *Certain Steel Pipes and Tubes from Japan* (48 FR 1206, January 11, 1983).

*DOC Position:* We agree with respondents. Following our precedents in *Industrial Nitrocellulose* and *Steel Pipes and Tubes* and *Televisions from Japan* (53 FR 4050, February 11, 1988), the Department has not included the expenses incurred by Campolonghi in defending the antidumping investigation.

*Comment 32:* The petitioner argues that the Department should use the accelerated depreciation used by the company in its accounting records instead of the straight line depreciation calculated for the submission.

The respondent states the company used a systematic method of depreciation for the response instead of the voluntary accelerated method used to defer corporate tax liability.

*DOC Position:* The Department applied the method of depreciation which was the method used by the company in its accounting records and accepted in Italy for financial statement purposes.

*Comment 33:* Petitioner argues the overall cost should be increased at least 34 percent to correct respondent's underreporting of raw material costs as a result of the computation of dimension waste.

*DOC Position:* For the final determination, the dimension waste factor has been computed for each granite type on the basis of the percentage of the quantity of waste to the ouput of material quantities from the dimensioning process. This factor was then applied to the cost of the project incurred prior to the dimension process in order to obtain a dimension waste cost. Since the factor used was based on verified quantities of output, an additional increase in cost is not warranted.

**Constructed Value/Cost Comments—Freda**

*Comment 34:* Petitioner argues that Freda's purchases of granite blocks from its related company, Campolonghi, should not be relied upon for the final determination. Petitioner states that Freda made all of its purchases of granite blocks from related companies, and cites one instance where Freda purchased granite block from Campolonghi and resold it one month later at a profit. Petitioner states that the calculation of Freda's constructed value is overwhelmingly dependent on the raw material cost used for granite block. If this price is inaccurate, the Department must increase Freda's raw material costs to reflect market values.

Freda states that the block it purchased from the Campolonghi and sold to a third unrelated slabbing company for a higher price one month later was not sold to that slabbing company for its own production process. Freda required the third company to purchase the block. The block had been sent to this company for conversion into slabs for Freda's use. As the the slabs were found to be unsatisfactory, Freda billed the slabbing company the cost of the block plus a profit.

*DOC Position:* The Department analyzed the block and slab prices paid by Freda to Campolonghi and compared these to invoice prices of the same type and size of product purchased from unrelated companies. We found that unrelated companies charged a higher price. Therefore, in accordance with section 773(e)(2), the Department increased Freda's material costs by the difference between the invoice prices between Freda and Campolonghi and the invoice prices for the same material for transactions between unrelated companies, when exact comparisons

could be made. The Department used an average of these comparisons to increase material costs for the granite types for which an exact comparison could not be found.

The details of the purchase of the block and its resale one month later were not provided to the Department during Verification and, therefore, could not be verified.

*Comment 35:* Petitioner argues that constructed values for a significant number of projects were calculated erroneously, because Freda reported the cost of granite blocks from related companies rather than the cost of finished slabs purchased from unrelated companies.

*DOC Position:* The Department revised the material costs to reflect arm's length transaction prices using the slabs that had been purchased and used for the projects instead of the granite blocks which had not actually been sawn and finished by the company for the projects.

*Comment 36:* Petitioner argues that Freda stated that its block vendor credits Freda's account for broken, defective, or otherwise unusable slabs. Freda, however, provided no documentation to support this statement. The petitioner further states that undocumented comments by a respondent should not be considered verified information or relied upon for the final determination, and that the sawing waste factor of respondent should be discarded or at least increased for the broken, defective or unsuable slabs.

*DOC Position:* The Department used the actual verified slab waste for those specific granite types used in the projects under investigation for its final determination.

*Comment 37:* Petitioner argues that the Department verified the polishing costs for only one type of granite and, therefore, the unverified nature of Freda's other cost of production requires that the overall cost of production be determined by using petitioner's information as the best information available.

*DOC Position:* When all or some elements of specific types of reported costs could not be verified, the Department made adjustments based on information developed at verification. However, these adjustments were confined to limited areas. Therefore, the Department accepted the remainder of Freda's response which could be verified.

*Comment 38:* Petitioner states that the Department's verification report shows that the dimensioning waste factor used by Freda is incorrect. The petitioner further states that the verification report indicated that the amount calculated by respondent at verification must be increased by netting the beginning cut-to-size granite inventory against net granite output. The report then states that the respondent did not make such beginning cut-to-size inventory figures available to the Department at verification. Petitioner states that this refusal to cooperate with the Department's verifiers must lead the Department to discard the figures provided by respondent.

Freda argues that the opening cut-to-size slab inventory for 1987 was not included in its waste calculations because the inventory included none of the granite types subject to the investigation. Moreover, the opening inventory was not provided to the Department during verification because it was not requested by the Department at that time. Respondent further states that Freda personnel were cooperative with Department personnel and were willing to answer questions and recalculate or revise certain data as requested by the Department during the verification process.

*DOC Position:* The Department requested that Freda provide its dimensioning waste calculation during verification. Beginning inventory is one of the factors which must be considered for this calculation. Therefore, the company should have provided this information to the Department during verification. Since Freda did not do so, the Department had to rely on a BIA number for this component.

As BIA, the Department derived a dimensioning waste factor by calculating "beginning inventory" based on the company's financial statements. After adjusting the waste factor for the beginning inventory, the Department applied the company's dimensioning waste factors to the company's costs.

**Constructed Value/Cost Comments—Formai and Northern Granites**

*Comment 39:* The petitioner alleges that material costs were not verified for Formai and Northern Granites because the companies could not trace raw granite blocks from purchase to the completion of cut-to-size projects and certain critical documentation, such as invoices and ending inventory, were not provided. Therefore, the material costs were not verified and the Department should use "best information."

*DOC Position:* The Department performed various verification procedures to determine whether all materials used for a project were included in the cost of production. The Department inspected the official "block purchased book", which the company is required to maintain for the Italy Tax Authority, and traced actual invoices of the fabricators from cut-to-size pieces to slabs and blocks for the projects. The Department concluded that all material costs were included in the projects reviewed.

*Comment 40:* The petitioner contends that movement expenses related to bringing the block to the company and exchange gains and losses of the company should be included in fabrication expenses for cut-to-size granite and for slabs.

*DOC Position:* The movement expenses related to bringing the block to the company were included as material costs since they were incurred in order to make the material available for use in production. These were appropriately classified as material costs.

The exchange gains and losses related to material purchases could not be segregated from the company's overall exchange gains and losses. However, the net amount was so insignificant as not to have an effect on the cost of materials.

*Comment 41:* Petitioner argues that since the cost of production of Northern Granites was higher than the prices charged by unrelated contractors for sawing block, the actual costs should be used.

*DOC Position:* In calculating constructed value for cut-to-size projects, the Department used the invoice prices between Formai and Northern Granites (Formai's related company) for sawing performed by Northern Granites, pursuant to section 773(e)(2), since these prices were comparable to prices paid to unrelated companies. For cost of production purposes, the Department used respondent's submission which was based on transfer price, since transfer price was equivalent to cost.

*Comment 42:* Petitioner states that there is no evidence on the record that Formai's and Northern Granite's selling, general and administrative expenses were satisfactorily verified.

*DOC Position:* The information presented in Formai's response was reconciled to the underlying records of both companies. However, certain costs included in the cost of manufacturing, which was the basis used to allocate the G&A expenses, were misclassified by Formai. Therefore, the Department adjusted the calculation by reclassifying these expenses.

*Comment 43:* The petitioner claims that the project included in Formai's response, which was not completed by November 30, 1987, should not be

excluded because the Department is not reviewing sixty percent of respondents' U.S. exports during the period of investigation.

*DOC Position:* As explained in response to comment 9, the Department obtained information on 60 percent of the sales completed during the POI. In our view, this information is sufficient to determine whether Italian granite is being, or is likely to be, sold at less than fair value. Therefore, we have not considered this additional sale by Formai.

**Constructed Value/Cost Comments for Euromarble**

*Comment 44:* Petitioner contends that, for the final determination, the Department should not rely on any data submitted by Euromarble, but should rely on the BIA. Petitioner bases this contention on the belief that Euromarble failed to establish the reliability and credibility of its data during verification. Although Euromarble resubmitted its data, correcting the specific numbers verified by the Department, the Department should not assume that unverified information resubmitted by the respondent is correct.

*DOC Position:* The Department verified the actual costs incurred by Euromarble for purposes of the final determination. The Department did not use the unverified information submitted by the respondent.

*Comment 45:* Petitioner contends that Euromarble initially failed to submit all of the costs incurred under factory overhead and general expenses for the granite under investigation. The corrected figures should be used in the final determination, if the Department does not rely on the best information available, as petitioner insists.

Respondent contends that Euromarble does not engage in drafting of any kind either before or after a U.S. sale is made. Since Euromarble revised overhead costs and general expenses during the verification, the Department should use these verified expenses.

*DOC Position:* Neither Euromarble's submission nor its revised calculations included certain factory overhead expenses, such as rent and other industrial costs. Therefore, the Department included these amounts which it obtained during the course of verification and allocated these expenses based on the "cost of sales" in 1987.

*Comment 46:* Petitioner contends that all companies incur a certain amount of additional waste at the slabbing stage due to breakage, slabs cuts whose veining makes them second quality slabs, and other factors. This additional waste must be accounted for in the final determination, since none of this additional waste is accounted for by respondent's theoretical waste figure. Respondent contends that the Department scrutinized Euromarble's slabbing production data and reviewed information showing that sawing waste figures used by Euromarble were reasonable and accurate.

*DOC Position:* The Department examined actual slabbing waste for six different types of granite during the verification and reviewed actual slabbing waste for some cut-to-size projects. Based on this analysis, the average waste factor used by the respondent was confirmed.

*Comment 47:* Petitioner contends that the dimensioning waste percentages examined by the Department are not necessarily indicative of the percentages experienced on projects other than the two projects examined at verification. Therefore, if the Department uses the dimensioning waste factor submitted by the respondent, at a minimum, the Department should use the highest percentage of dimensioning waste factor submitted by the respondent.

Euromarble contends that the waste figures used in the submission were conservative and reasonable, as the sample transactions that the Department examined during verification demonstrated.

*DOC Position:* The Department's analysis of dimensional cutting waste, during and subsequent to verification, reflected a higher overall dimensioning waste than the estimated average used by the respondent in its submissions. Therefore, a revised weighted-average waste factor was used for the final determination.

*Comment 48:* Petitioner contends that Euromarble's claim for a reduction in its costs, based on its related company overcharging for sawing three centimeter thick slabs for one type of granite, should not be accepted. There is no indication in the verification report whether the revised price for this sawing was a reasonable market value.

Respondent contends that the revised price, in fact, reflected market prices as demonstrated to the Department during verification.

*DOC Position:* The Department verified the amount claimed through the published price list for the subcontracting service and then compared this amount to other invoices for the same or similar service. After this analysis, the Department concluded that the amount was actually higher than the price that should have been charged and, therefore, accepted Euromarble's claim.

**Constructed Value/Cost Comments for Savema**

*Comment 49:* The petitioner argues that the Department should not use Savema's theoretical sawing waste figures to determine the amount of cubic meter raw block which was necessary to produce a square meter of finished granite, because such information was not verified. Instead the petitioner's information or the average sawing waste for the three granite types which were verified should be used.

The respondent argues that the slabbing waste used in the submission was not theoretical. The amount used in the response, the company claims, was the average sawing waste rounded to the nearest tenth of a centimeter and that this sawing waste was tested at verification by a physical measurement. Therefore, the submission should be used.

*DOC Position:* The Department calculated the slabbing waste for three granite types from documentation provided by the company during verification and adjusted the material cost for those projects which used the granite types. The slabbing waste for all three types, which accounted for a substantial amount of the granite used in the projects under investigation, were higher than the slabbing waste reported in the submission. The Department, therefore, used a weighted-average slabbing waste based on these granite types.

*Comment 50:* The petitioner claims that the Department should account for the exchange losses in the material costs calculations.

*DOC Position:* The exchange losses related to material purchases were so insignificant that there was no effect on the costs of the materials.

*Comment 51:* The petitioner claims that the verification report does not state whether the sawing services, finishing, dimensioning, dimensioning waste and subcontract labor were successfully verified.

*DOC Position:* During verification the Department did not note any methodological questions or issues related to the reconciliation of the information presented in the response with the data maintained in the books of the company in its ordinary course of business. The dimensioning waste for the granite types verified by the Department confirmed the average dimensioning waste used by the respondent.

*Comment 52:* The petitioner argues that, in some cases, the allocation method used to attribute factory

overhead to different departments bore no relationship to the use of the costs.

*DOC Position:* The Department tested the allocation of overhead using a method which appeared to be more reflective of the actual usage of specific overhead costs and found that this method did not yield a different result in the method used by the respondent.

*Comment 53:* The petitioner claims that certain technical expenses, such as drafting shop tickets and other services, should be project-related and should, therefore, be included in the cost of manufacturing, rather than general expenses. Since Savema could not identify these services with a project, the full amount should be included and allocated to the projects. Savema contends that the expenses recorded are properly classified as general expenses, because:

(1) Technical services and administrative functions are performed by an unreleated company which billed for both of these services in one amount not segregated as to the administrative or to the technical services;

(2) The company pays an even, fixed administrative fee; and

(3) Certain drafting costs are related to bids, not specific projects.

*DOC Position:* The Department did not revise the respondent's submission since the amount of technical services which were related to a specific project and which would have been considered part of the cost of manufacturing, could not be determined.

**Constructed Value/Cost Comments for Pisani**

*Comment 54:* Respondent claims that some of the deficiencies noted during verification related to the dimensioning waste are insignificant and other statements are in error. For example, although the Department states that there are no sales made from miscellaneous inventory, the company did, in fact, make some sales. Also, according to the information attributed to one project, the full amount of the block used in that project should not be attributed to the project since, in fact, the block was defective.

*DOC Position:* The Department's verification report summarizes the information obtained during verification. Although there may be additional facts related to some of the statements made in the report, the company did not provide such information during verification nor documentation to support such statements. Therefore, any information submitted is untimely. We base our final determination on verified information.

*Comment 55:* The petitioner argues that, since the slabbing waste could not be verified for Pisani, the Department should use the total waste for the two granite types which were obtained during verification.

*DOC Position:* Because the Department could not verify that the total output of slabs from the sawing process were usable slabs for the cut-to-size projects, the Department had to resort to best information available. As BIA, the Department based the slabbing waste on the overall waste for the two granite types reviewed during verification and a third type analyzed subsequent to verification. The Department deducted the dimensioning waste from the overall waste to calculate a "best information" amount for slabbing waste.

*Comment 56:* The petitioner claims that the Department should use the actual lease expense reported on the company's financial statements, not the imputed amount which the company calculated for its submission.

*DOC Position:* The Department agrees with the petitioner and has included the amount for the lease reported on the company's financial statements.

*Comment 57:* The petitioner argues that the costs for production consultants, drafting, architectural consulting, quality control inspection, and the salaries and termination pay for the production manager, project manager, and draftsman, should be included in the cost of manufacturing, because these costs are related to manufacturing.

*DOC Position:* The Department agrees with the petitioner and has reclassified these expenses as part of the costs of manufacturing.

*Comment 58:* The petitioner argues that the Department should not accept the unverified sawing invoice charges as evidence that related companies charge the same prices as unrelated companies. The Department must use "best information available" based on the petitioner's information.

*DOC Position:* The Department reviewed the invoice in question and has no basis to believe that it is not an invoice from an unrelated party. Therefore, the Department used this invoice to adjust Pisani's fabrication costs in accordance with section 773(e)(2) of the Act.

*Comment 59:* The petitioner argues that the Department should use the highest price for Pisani's block purchases of Balmoral Red since the company could not identify the block used in the project under investigation.

The respondent contends that it told the Department during verification that the lower-priced blocks were used for the project.

*DOC Position:* Since the specific block used in the project could not be determined from the company's records, the average prices for purchases of blocks of Balmoral Red were used.

*Comment 60:* The petitioner contends that Pisani's sawing costs should take into account the additional amounts charged by its subcontractor. Therefore, the sawing costs should be increased by the amount of the subcontractor's charge.

The respondent argues that the material costs were based on list price and that, in addition to these charges, discounts were also received.

*DOC Position:* The Department agrees that the additional charges reflected on the invoices for sawing costs should be included when determining the total costs for these services. The company did not provide invoices or other evidence reflecting the discounts during verification.

*Comment 61:* The petitioner claims that the Department should not reduce the costs of slabs for reimbursements for defective slabs because there is no evidence on the record which supports respondent's claim.

*DOC Position:* The Department did not make an adjustment for reimbursement for defective slabs because the respondent did not provide support for the statement.

*Comment 62:* The petitioner states that, unless the Department has verified that Pisani pays no transportation costs from the non-Italian quarry to Italy, it should attribute to Pisani's purchases of raw granite block the highest transportation expenses incurred by another respondent to ensure that all costs have been included in the constructed value.

The respondent claims that all of its purchases are from granite trading companies with offices located in the Carrara area and, therefore, transportation cost should be the same.

*DOC Position:* The Department could not verify the transportation cost which Pisani submitted in its questionnaire response. Therefore, as best information available, the Department used the amount of transportation costs reflected in Pisani's financial statements and allocated this amount to each project based on its cost of manufacturing.

**Other Comments**

*Comment 63:* An interested party argues that if contracts negotiated by importers prior to the time of the Department's preliminary determination are not exempted from the suspension of

liquidation order, material injury will be caused these parties.

*DOC Position:* Section 733(d)(2) of the Act, 19 U.S.C. 1673b(d)(2), requires the posting of a cash deposit, bond, or other security for each entry subject to the Department's suspension of liquidation order. The Act does not allow the Department to make this sort of exception for merchandise subject to the investigation.

**Continuation of Suspension of Liquidation**

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain granite products from Italy for all manufacturers/producers/exporters, with the exception of Formai, Henraux and Savema, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this note in the **Federal Register**. For Formai & Mariani S.r.1. and its related company, Northern Granites S.r.1., Henraux S.p.A and Savema S.p.A., liquidation is not suspended. For the remaining firms, the Customs Service shall require a cash deposit or the posting of a bond equal to the estimated amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown below. This suspension will remain in effect until further notice. The weighted-average margins are as follows:

| Manufacturer/producer/exporter | Margin percentage |
|---|---|
| Campolonghi Italia S.p.A. and its related companies, Freda S.p.A and Olympia Marmi S.p.A. | 1.54 |
| Euromarble S.p.A. | 1.02 |
| F. 11i Guarda S.p.A. | 28.34 |
| Formai & Mariani S.r.1. and its related company, Northern Granites S.r.1. | 0.21 |
| Henraux S.p.A. | 0.09 |
| Pisani Brothers S.p.A. | 4.93 |
| Savema S.p.A. | 0.00 |
| All others | 4.98 |

With respect to all companies except Formai & Mariani S.r.1, and its related company, Northern Granites S.r.1., and Henraux S.p.A., the cash deposit or bonding rate established in the preliminary antidumping duty determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register**. This suspension of liquidation will remain in effect until further notice. With respect to Formai & Mariani S.r.1., and its related company Northern Granites S.r.1., and Henraux S.p.A., any bond of other security ordered in its preliminary antidumping duty determination are hereby released or refunded.

**ITC Notification**

In accordance with section 7359(d) of the Act, we have notified the ITC of our determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on certain granite products form Italy, entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

July 13, 1988.

**Jan W. Mare,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16213 Filed 7-18-88; 8:45 am]

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**[C-475-702]**

## Final Negative Countervailing Duty Determination; Certain Granite Products From Italy

**AGENCY:** Import Administration, International Trade Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We determine that *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Italy of certain granite products as described in the "Scope of Investigation" section of this notice. Since the estimated net subsidy is either *de minimis* or zero for all manufacturers, producers or exporters in Italy of certain granite products, our determination is negative.

We have notified the U.S. International Trade Commission (ITC) of our determination.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mark Linscott, Lori Cooper or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8330, 377-8320 or 377-2438.

**SUPPLEMENTARY INFORMATION:**

**Final Determination**

Based on our investigation, we determine that *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Italy of certain granite products. For purposes of this investigation, the following programs are found to confer subsidies:

- Preferential Transportation Rates
- Interest Rebates on Conversion Loans from the European Coal and Steel Community (ECSC)
- Reductions in Social Security Payments for Companies Located in the Mezzogiorno
- Tax Concessions under Law 614.

We determine the estimated net subsidy under these programs to be *de minimis* or zero for all manufacturers, producers or exporters in Italy of certain granite products.

**Case History**

Since the publication of the preliminary determination [*Preliminary Negative Countervailing Duty Determination: Certain Granite Products from Italy* (52 FR 48732, December 24, 1987)] (*Certain Granite*), the following events have occurred. On December 30, 1987, petitioner requested an extension of the final determination to correspond with the final determination in the concurrent antidumping duty investigation of certain granite products from Italy. On January 28, 1988, we published the extension notice (53 FR 2521). On March 2, 1988, respondents requested a postponement of the final antidumping duty determination from May 9, 1988, to June 20, 1988. On March 15, 1988, we published a postponement notice (53 FR 8479, March 15, 1988). On June 2, 1988, respondents requested another postponement of the final determination in the antidumping duty investigation to July 13, 1988. This postponement notice was published on June 15, 1988 (53 FR 22369).

The Government of Italy (GOI) and respondent companies submitted supplemental questionnaire responses on the following dates: January 28, 29, February 1, 2, and March 29, 1988.

From April 5 to May 2, 1988, we conducted verification in Italy of the questionnaire responses of the GOI and the following respondent companies: Campolonghi and related companies Freda and Olympia Marmi, Euromarble, Henraux and related company Giuseppe Furrer, Pisani, Fratelli Guarda, Bonotti, Antolini Luigi, Granitex, Margraf, Marcolini Marmi and Cremar.

Amended responses based on information reviewed at verification were submitted by the GOI on May 19, 1988, and by the respondent companies on June 15 and 16, 1988. None of the interested parties requested a public hearing; however, initial case briefs were filed by petitioner, respondent companies and the GOI on June 2, 1988. The parties filed rebuttal briefs on June 10. Comments on verification were filed by the GOI on June 13, 1988. Petitioner filed its rebuttal to the GOI's verification comments on July 7, 1988.

On May 31, 1988, we served a supplemental questionnaire on the Commission of the European Communities (EC), the GOI and the respondent companies concerning EC-sourced loan programs. We received responses on June 14 and 15, 1988, and we conducted verification of the EC response from June 29 to July 1, 1988, in Luxembourg. We received initial briefs on the EC verification on July 7, 1988, and reply briefs on July 8, 1988, from petitioner and respondents. The Commission of the EC submitted factual corrections to the EC verification report on July 7, 1988.

**Scope of Investigation**

The products covered by this investigation are certain granite products from Italy. Certain granite products are ⅜ inch (1 cm) to 2½ inches (6.34 cm) in thickness and include the following: Rough-sawed granite slabs; face-finished granite slabs; and finished dimensional granite including, but not limited to, building facing, flooring, wall and floor tiles, paving, and crypt fronts. Certain granite products do not include monumental stones, crushed granite, or curbing. Certain granite products are currently classified under *TSUSA* item number 513.7400 and under *HS* item numbers 2516.12.00, 6802.23.00 and 6802.93.00.

**Exclusion Requests**

As discussed in *Certain Granite,* the largest companies comprising 60 percent of the value of exports of the subject merchandise to the United States in 1986 (our review period) requested exclusion from any possible countervailing duty order which might result from this investigation, claiming not to have benefitted from countervailable subsidies. Following our standard practice, we required the GOI to certify that those companies requesting exclusion either did not use any of the programs under investigation or received only *de minimis* benefits under these programs. Based on the responses and the government's certification, we preliminarily determined that those companies producing and exporting the subject merchandise which requested exclusion would have qualified for exclusion from any eventual countervailing duty order. However, since we preliminarily determined that manufacturers and exporters of Italian granite do not receive subsidies, based on the responses of firms not requesting exclusion, we did not need to reach the issue of exclusion.

While verifying the GOI's responses, we also verified the government's certification of the exclusion requests. We verified that the certification was essentially accurate in all respects and that the government correctly certified that no exclusion company received benefits that were cumulatively above *de minimis.* During this verification and the verification of the responses of the companies requesting exclusion, we discovered a few minor discrepancies which are described in the verification report. However, these discrepancies in the government certification were insignificant in nature and were not sufficient to raise any company requesting exclusion above the *de minimis* level. Accordingly, we would determine that those companies that requested exclusion and are producers and exporters of the subject merchandise would qualify for exclusion. However, we find that the situation here is identical to that in our preliminary determination. Because the estimated net subsidy for respondent companies that did not request exclusion is *de minimis,* no final order will be issued and the exclusion provision does not apply.

**Analysis of Programs**

For purposes of this final determination, the period for which we are measuring subsidization is calendar year 1986 (the review period), which corresponds to the fiscal year of all but one of the respondent companies.

At the outset of this investigation, the GOI identified the largest producers and exporters of certain granite products that accounted for at least 60 percent of exports of the subject merchandise to the United States during the review period. These companies subsequently requested exclusion and the government certified these exclusion requests. We then informed the GOI that, by requesting exclusion, these companies had set themselves on a separate investigative track, necessitating our choosing a new representative group of companies consisting of the largest producers and exporters accounting for 60 percent of the remaining pool of exports to the United States. In response, the GOI identified twelve additional companies, and we sent questionnaires to ten of these companies.

In countervailing duty investigations, it is our practice to calculate a country-wide rate which is an average rate for all companies whose individual rates for all countervailable programs combined are neither *de minimis* nor significantly different from rates for other companies. Since no respondent company's individual rate is above *de minimis,* we have not calculated country-wide rates for those programs determined to be countervailable.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written comments from respondents and petitioner, we determine the following:

**I. Programs Determined To Confer Subsidies**

We determine that subsidies are being provided to manufacturers, producers or exporters in Italy of certain granite products under the following programs:

*A. Preferential Transportation Rates*

Petitioner alleges that manufacturers, producers and exporters of certain granite products in Italy receive preferential transportation rates from Ferrovie dello Stato (the Italian state railway system).

The provisions set forth in Article 19 of Law 887 establish reduced rail rates for raw mineral substances produced and processed in the Italian islands. There are two levels of incentives available under Article 19: For raw mineral substances mined or extracted in the Italian islands, the normal tariff rates are reduced by 30 percent; for the same substances that are further processed on the islands, the rates are reduced by 60 percent.

According to the text of Law 887, raw mineral substances are the only products eligible for preferential rail rates. However, it does not specify a list of qualifying raw mineral substances and we could verify only that oil, clay, marble and granite, among other substances, are included within the definition of raw mineral substances.

The normal railway rates to which the reductions are applied are calculated based on the weight, distance, and tariff classification of the shipped products. For shipments from the islands, the calculation includes the distance covered by the state-run ferries, which are used to transport the rail cars across the water. The reductions are automatically applied to qualifying shipments of raw mineral substances by state rail officials.

In our preliminary determination we stated that, based on information submitted to the Department by the GOI and respondent companies, none of the respondent companies received benefits under this program. However, at the company verifications and after the government verification, we were informed for the first time that, during the review period, three respondent companies received 30 percent discounts from Ferrovie dello Stato for rail shipments of granite blocks from Sardinia to the Italian mainland.

No information provided to us during verification indicated what industries, in fact, ship qualifying substances from the Italian islands, or even what materials specifically fall under the definition of raw mineral substances within the meaning of Law 887. Based on the limited information submitted on the record of this investigation, we determine that granite producers are one group of a limited number of industrial groups in the Italian economy that purchase the raw mineral substances for which preferential rates under Law 887 are granted, and, therefore, that these special rates are limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5)(B) of the Act.

Of the respondent companies, we verified that only Henraux, Antolini Luigi and Cremar received reductions in transportation rates during the review period. To calculate the benefit to these companies under this program, we took the difference between the price they would have paid absent the 30 percent reduction and the price they actually paid with the reduction for shipments of granite and allocated this amount over total granite sales during the review period. This resulted in an estimated net subsidy of less than 0.0001 percent *ad valorem* for Henraux, 0.04 percent *ad valorem* for Cremar, and 0.30 percent *ad valorem* for Antolini Luigi. The *ad valorem* rate is zero for all others.

*B. Interest Rebates on Conversion Loans From the European Coal and Steel Community (ECSC)*

Although not alleged by the petitioner, we investigated this program because it was discovered during the course of the company verifications.

Article 56(2)(b) of the Treaty of Paris, which created the ECSC, authorizes ECSC aid to "activities capable of reabsorbing redundant [ECSC] workers into productive employment." A council decision published in the *Official Journal of the European Communities*, No. C 178 of July 27, 1977, authorized conversion loans for projects that involve, or are likely to involve, reemployment of redundant ECSC workers.

Directorate General-18 (DG-18), the office of the Commission of the European Communities that administers these loans, may finance up to 50 percent of the costs associated with a qualifying investment. An applicant must be a small- or medium-sized enterprise, defined as an enterprise that: (1) Employs less than 500 people; (2) has net fixed assets of less than 75 million European Currency Units (ECUs); and (3) has no parent enterprise that owns more than one-third of its share capital. A qualifying project must create new positions that are capable of being filled by coal and steel workers.

We verified that loans are available and have been disbursed to companies in virtually every manufacturing and service industry. We also verified that no region of a member country is excluded from receipt of conversion loans. However, interest rebates associated with these loans are determined based on regional location. For firms located in "priority" regions that have suffered high unemployment in the coal and steel industries, the interest rebate is granted whether or not a qualifying firm actually employs redundant ECSC workers. A five percent interest rebate is granted for the portion of loan principal equal to (a) the number of new positions created, multiplied by (b) two-thirds, multiplied by (c) 20,000 ECUs per worker. In contrast, firms located outside "priority" regions must hire redundant ECSC workers. Their five percent interest rebate applies only to a portion of the loan equal to the proportion of newly-created positions actually filled by redundant ECSC workers multiplied by 20,000 ECUs.

We verified that Fratelli Guarda, the only respondent company that received a conversion loan, is located in a "priority" region and that it received an interest rebate for a loan that was outstanding during the review period. We also verified that it filled no newly-created position with a redundant ECSC worker. If Fratelli Guarda were located outside a "priority" region, it would not have qualified for an interest rebate. Therefore, we determine that this rebate is countervailable because receipt was dependent on location in a specifically designated "priority" region.

To calculate the benefit under this program, we divided the total value of rebates received by Fratelli Guarda during the review period by its total sales of all products during the review period and arrived at an estimated net subsidy of 0.10 percent *ad valorem for Fratelli Guarda*. The *ad Valorem* rate is zero for all others.

*C. Reductions in Social Security Payments Under the Cassa per il Mezzogiorno Program*

Petitioner alleges that manufacturers, producers and exporters in Italy of certain granite products receive benefits under the following Mezzogiorno Regional Assistance Programs: (1) National corporate tax exemptions; (2) local corporate tax exemptions; (3) capital grants; (4) interest rate reductions; and (5) reductions in social security payments. We verified that the first four programs were not used by the respondent companies (*see* section III.C. of this notice). The last program, reductions in social security payments, is discussed below.

According to the government's responses, all Italian companies that operate facilities in the Mezzogiorno region of Italy are entitled to a ten percent reduction in social security payments owed to the National Social Security Institute (INPS) for all workers employed in this region. The reduction may be increased to 20 percent for any additional employees hired after September 30, 1968, over and above the number of individuals employed by the company on that date. For staff employed between July 1, 1976, and December 31, 1980, there was a total exemption from payments owed to the INPS, up to December 31, 1986.

Because benefits under this program are available only to firms that locate facilities in the Mezzogiorno, we determine that this program is limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is countervailable.

We verified that only Henraux received reductions in social security payments during the review period for employees at stockyards it owns in the Mezzogiorno. Henraux filed a timely request for exclusion and was certified by the Government of Italy as having received only *de minimis* benefits under this program.

To calculate the benefit under this program, we divided the total value of the social security reductions Henraux received during the review period by its total sales of all products during the review period and arrived at an estimated net subsidy of 0.08 percent *ad valorem* for Henraux. The *Ad valorem* rate is zero for all others.

*D. Tax Concessions Under Law 614*

Article 30 of Law 614 provides for reductions in local corporate income tax (ILOR) rates to small- and medium-sized Italian companies that establish or

expand facilities in designated depressed territories of northern and central Italy. ILOR is one component of a company's overall national corporate tax liability; and other component is the national corporate tax, IRPEG. Both IRPEG and ILOR are imposed and collected by the national government; however ILOR revenues are redistributed to local areas based on need and other criteria, without regard to the amount collected from a given locality.

If an enterprise is newly established, the total amount of the company's income is exempt from the ILOR tax. For firms expanding their productive facilities, the ILOR exemption applies only to income derived as a result of the expansion. Reductions may be claimed for ten years following the establishment or expansion of a facility.

Law 614 was terminated for most regions on December 31, 1985. It was later reinstated under Law 879 until December 21, 1990, exclusively for two depressed territories devastated be earthquakes: Friuli-Venezia Giulia and Marche. Residual benefits under Law 614 may continue for ten years following expiration.

Because this program is available only to firms that invest in designated areas of northern and central Italy, we determine that it is limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is countervailable.

Based on our review of certified tax returns for all respondent companies, we verified that only Granitex claimed a reduction in taxes under this program on the tax return filed during the review period. We calculated the benefits under this program based on the company's overall corporate income tax liability for the year in which the tax return was filed. We included in this calculation the net effect on Granitex's national corporate tax (IRPEG) liability, because both ILOR and IRPEG are part of a company's overall national tax liability. We first determined the difference between what Granitex paid in ILOR and IRPEG during the review period and what it would have paid absent this program. We then divided this amount by the total sales of Granitex during this period. Based on this calculation, we arrived at an estimated net subsidy of 0.36 percent *ad valorem* for Granitex. The *ad valorem* rate for all others is zero.

**II. Programs Determined Not To Confer a Subsidy**

We determine that subsidies are not being provided to manufacturers, producers or exporters in Italy of certain granite products under the following programs:

*A. Interest Rate Reductions Under Decree 902 of 1976*

Petitioner alleges that manufacturers, producers and exporters in Italy of certain granite products receive loans under Decree 902 of 1976 that are limited in availability and that are received on terms inconsistent with commercial considerations. In its responses, the GOI stated that Decree 902 offers loans to firms located in all regions of Italy and involved in all types of production activity.

During verification, we reviewed the legislative structure that implemented this program. Decree 902 was issued pursuant to Law 183 of May 2, 1976. Article 15 of Law 183 authorized the establishment of a national fund to promote industrialization and modernization in northern, central and southern Italy. Decree 902 divides administration of the loan program, which offers reductions in interest rates, between the Ministry of Industry and Commerce (MIC), which has authority to disburse loans to firms in northern and central Italy under Title II, and the Cassa per il Mezzogiorno (the Mezzogiorno Agency), which has similar authority for firms in southern Italy under Title III.

As originally enacted, Decree 902 authorized the maximum interest rate reduction for firms located in either southern Italy or in areas designated as insufficiently developed in northern and central Italy. For these firms, the reduced rate was equal to 40 percent of the "reference rate," a conglomerate of commercial interest rates in Italy compiled monthly by the Bank of Italy. The minimum benefit, equal to 60 percent of the reference rate, was available to firms located in the remaining areas of northern and central Italy. In 1981, these benefits were changed by ministerial decree to an interest rate of 36 percent of the reference rate for firms in southern Italy, 48 percent for firms in insufficiently developed areas of central Italy and 72 percent for firms in the remaining areas of central Italy and all areas of northern Italy. In 1986, the rates in effect were 50 percent of the reference rate for southern Italy and 60 percent for northern and central Italy.

The determine whether any countervailable benefits were provided to manufacturers, producers and exporters in Italy of certain granite products, we examined the availability and use of 902 benefits by Italian firms.

Together, Articles Five, Six and Eight of Title II and Article 12 of Title III offer benefits to all companies in all areas of Italy. There are no provisions in Decree 902 that limit availability of benefits to particular types of production activities. The only restrictions set forth in Decree 902 are capitalization ceilings, as the program is designed for small- and medium-sized firms, and project requirements. Firms located in southern Italy and in insufficiently developed areas of central and northern Italy may receive loans for modernization, expansion or new construction of production facilities, while firms located in the remaining areas of central and northern Italy qualify for modernization of existing facilities.

We verified that, since 1980, loans under decree 902 have been awarded to virtually every productive sector in Italy. In each year between 1980 and 1987, all 17 categories of Italian manufacturing industries, as defined by the Istituto Centrale di Statistica, received 902 loans. These categories include: food; textiles; leather; woodworking; metallurgical; mechanical; non-metallic mineral; plastic products; consumer products repair; mineral extraction; apparel and furnishings; steel; chemical; rubber; paper and paper products; printing and publishing; and other manufacturing. We also verified that the non-metallic mineral grouping, in which granite production is categorized, received neither a dominant nor a disproportionate share of loans in any of these years. In addition, we verified that Law 902 loans have been awarded in every region of Italy but at differing interest rates, depending upon the region.

In past cases *(e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada* (51 FR 10041, 10045, March 24. 1986)) *(Groundfish from Canada),* where the level of benefits under a particular program was tiered, *i.e.,* varied between regions, but the tiers together covered all regions of the country, we calculated countervailable benefits based on any additional benefits received over and above the lowest tier of benefits that was available under the program. We reasoned that, when a tiered program is available in every region of the country, the lowest level of benefits is not limited, so long as the minimum level of benefits has been received by more than a group of enterprises or industries.

We verified that Giuseppe Furrer and Ronchi Marmi, the only two producers of certain granite products to have received Decree 902 loans, were never

located in southern Italy or in insufficiently developed areas of northern and central Italy, and that these two companies received only the minimum benefit that was available.

Because the manufacturers, producers and exporters in Italy of certain granite products received only the lowest level of benefits under Decree 902, and we verified that the lowest level of benefits has been received by more than a specific enterprise or industry, or group of enterprises or industries, and by companies in all regions of Italy, we determine that the minimum level of benefits received by these companies is not countervailable.

*B. Contributions for Purchases of Electronic Equipment Under Law 696*

Under Law 696 of December 19, 1983, small- and medium-sized Italian companies engaged in production activities could apply for a contribution from the MIC toward the price of certain electronic machinery. This program was not alleged by petitioner but was discovered in reviewing the financial statements of the respondent companies. Under this program, a contribution of 32 percent of the price of the machinery is available to firms operating in the Mezzogiorno region. The remaining areas of Italy are eligible to receive a 25 percent contribution.

During verification we reviewed the criteria set forth in the law and the procedure developed by MIC to administer this program. The following eligibility criteria must be met by a firm applying for a Law 696 contribution: (1) It must have no greater than 300 employees; (2) it must have a net invested capital of less than L. 12 billion in 1986; (3) it must be a manufacturing, mining, artisan or crafts enterprise; (4) the application filed with MIC must be for the purchase of electronically-controlled machines; and (5) the application must have been submitted to MIC on or before April 30, 1985, for machinery ordered between December 21, 1983 and March 31, 1985.

Law 696 provisions for contributions toward the purchase of electronic machinery were terminated on December 29, 1984 for all applications postmarked after April 30, 1985. MIC is still in the process of processing and approving applications filed prior to this deadline.

In our preliminary determination, we stated that additional information was needed to determine whether Law 696 conferred subsidies on the manufacture, production or exportation of certain granite products from Italy. In order to determine if the provision of Law 696 contributions constitutes a countervailable subsidy, we must determine if the benefits provided are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(B) of the Act.

The text of Law 696 states that a 25 percent contribution is available to Italian firms in the mining and manufacturing sectors as well as artisan or crafts enterprises. The contribution is increased to 32 percent for firms operating in the Mezzogiorno. We verified that none of the respondent companies received Law 696 contributions at the 32 percent level during the operation of the program. Several of the respondent companies received contributions of 25 percent.

At verification we reviewed the sectors that received Law 696 contributions during the 18 months of its existence. We confirmed that contributions have been awarded to thousands of companies throughout Italy representing a variety of industries and a wide range of products. Law 696 contributions have been approved and disbursed to companies in virtually all manufacturing sectors, including mineral extraction, food, textiles, steel, metallurgical work, chemicals, rubber, plastic products, paper and paper products, printing and publishing, consumer goods, leather, wood, mechanical products, non-metallic mineral processing and industrial construction and installation. We also verified that non-metallic minerals processing, the industrial group in which granite production falls, received neither a dominant nor a disproportionate share of Law 696 benefits.

As discussed in section II.A., above, where the level of benefits under a particular program is tiered, *i.e.*, varies between regions, but the tiers together covered all regions of the country, we calculate countervailable benefits based only on any additional benefits received over and above the lowest tier of benefits available under the program. When a tiered program is available in every region of a country, the lowest level of benefits is not limited, so long as the minimum level of benefits has been utilized by more than a group of enterprises or industries.

Because we verified that the respondent companies received only the minimum 25 percent contribution for purchases of electronically-controlled machinery under Law 696 and that this benefit has been granted to more than a specific enterprise or industry, or group of enterprises or industries, we determine that the minimum level of rebate awarded to these companies is not countervailable.

*C. Loans From Italian Special Credit Institutions*

Petitioner alleges that medium- and long-term loans disbursed by Italian special credit institutions, also known as medium- and long-term credit institutions (MLTs), to manufacturers, producers and exporters in Italy of certain granite products confer countervailable benefits. Petitioner argues that these institutions are either financed or directed by the GOI and, therefore, this all medium- and long-term loans from them are countervailable.

During verification, we met with officials of Istituto Mobiliare Italiano (IMI) and an official of Mediocredito Toscano. Both institutions are MLTs and are authorized by law to engage in medium- and long-term lending. There are approximately 40 to 50 MLTs in Italy. Most of these institutions were established pursuant to Law 445 of 1952 and they derive their lending authority pursuant to this law. Except in very limited circumstances, only MLTs are authorized to disburse loans of more than 18 months. The government owns shares in many MLTs; 50 percent of IMI is owned by Cassa Depositi, which, in turn, is owned by the Ministry of Treasury. In contrast, Mediocredito Toscano has no direct government ownership.

We verified that all MLTs disburse two separate and distinct forms of medium- and long-term credit: (1) Loans that carry interest rate reductions under specific government programs and (2) commercial loans that are not mandated or funded by government programs. By reviewing all loan contracts for each respondent company, we were able to identify those loan transactions in which the government intervened in the form of interest rate reductions under specific programs (*e.g.*, Decree 902) and those which involved no government intervention. At each company, we confirmed that a loan contract pursuant to a government loan program always identifies the loan program and, if relevant, contains provisions which prescribe the interest rate reduction, such as the reduction available under Decree 902 which is calculated as a certain percentage of the reference rate (*see* discussion of "Interest Rate Reductions under Decree 902 of 1976" in section II.A. above). We found no evidence that those loans, for which the loan contracts specify no government program, are disbursed on any basis other than a commercial one.

As we stated in the *Final Negative Countervailing Duty Determination:*

*Carbon Steel Wire Rod from Singapore* (53 FR 16304, May 6, 1988), "[G]overnment ownership or control of a bank does not necessarily lead to the conclusion that the bank is operating in other than a commercial fashion." Based on information obtained during verification, we confirmed that agencies of the GOI own shares, at varying proportions, in many deposit banks which lend short-term, and in MLTs. All MLTs, whether government-owned in part or not, act on behalf of the government in disbursing loans with interest rate reductions under specific government programs.The bulk of their lending, however, involves no government intervention.

We examined the commercial nature of MLT lending that is not tied to government-funded programs by comparing interest rates on loans disbursed by one MLT, IMI, that has significant government ownership and those disbursed by another, Mediocredito Toscano, that has no government ownership. We found that, for loans disbursed simultaneously and on comparable terms, the interest rates were also comparable. Accordingly, we determine that medium- and long-term lending by MLTs, in which the GOI has direct or indirect ownership, that involves no government program does not confer countervailable subsidies on manufacturers, producers and exporters in Italy of certain granite products.

*D. Interest Contributions Under the Sabatini Law*

Although not alleged by the petitioner, we investigated this program because the company questionnaire responses indicated that several firms benefitted under the Sabatini Law during the review period. In our preliminary determination, we stated that we needed additional information in order to determine whether this program confers subsidies on the manufacture, production or exportation of certain granite products from Italy.

The Sabatini Law was enacted in 1965 to encourage the sale of machine tools and production machinery. It provides for deferred payment of up to five years on installment contracts for the purchase of such equipment and for a one-time, lump sum contribution from Medicredito Centrale (MC), the administering agency, toward the interest owned by the buyer of such equipment on the installment contracts.

Under the Sabatini Law, a buyer of machine tools issues promissory notes to the seller, with deferred payment of up to five years. The seller then discounts the notes payable at a MLT. The MLT decides whether to make application to MC for Sabatini Law benefits for the financing. If it applies, and if MC approves, the interest contribution is paid in one lump sum by MC either to the MLT, or to the seller, which in turn passes the contribution on to the buyer. The buyer then pays the MLT on the notes according to schedule, including all the charges and fees required by the institution.

The contribution is calculated as the present value of the difference between the stream of payments, over the term of all notes, using a market discount rate (the "reference rate") and the stream of payments using a beneficial discount rate (calculated as a certain percentage of the reference rate). The benefit associated with the lower discount rate is passed on to the buyer as a lump sum interest contribution for its obligations on the promissory notes. The discount transaction between the seller and the MLT for the notes remains a commercial operation, because the actual discount rate is a market rate.

Benefits under the Sabatini Law are available to companies throughout Italy at varying levels depending upon company location. The benefit is calculated using a discount rate equal to 35 percent of the reference rate for purchases of machines to be used in production units in southern Italy and a discount rate of 45 percent of the reference rate for purchases of machines to be used in production units in the remaining areas of Italy. The MC contribution accounts for the balance of the reference rate. During verification we found that the respondent companies received Sabatini Law contributions equal to the minimum level of benefit (*i.e.*, a discount rate of 45 percent of the reference rate).

The text of the Sabatini Law specifies no limitation regarding beneficiaries; all companies are eligible. Article One establishes a minimum machinery cost that now stands at L. 1,000,000. The text of the Sabatini Law does not limit eligibility based on regional location.

During verification, we reviewed documentation relating to the availability and use of Sabatini benefits throughout Italy. We verified that between 14 and 16 industrial groups covering all spheres of manufacturing received Sabatini Law benefits in each of the years from 1982 through 1986. These industrial groupings were as follows: Mining; food; textiles and clothing; skins, leather and shoes; wood and furniture; metallurgy; mechanics; non-metallic minerals; chemicals and artificial fibers; paper and cardboard; other manufacturing; agriculture and livestock; building construction and plant installation; trade; transportation and communication; and other services. We also verified that non-metallic mineral processing, the industrial group in which granite production falls, received neither a dominant nor a disproportionate share of the Sabatini Law benefits in any of these years.

Because the manufacturers, producers and exporters in Italy of certain granite products received only the minimum benefit under the Sabatini Law, and because we verified that Sabatini Law benefits are not limited to a specific enterprise or industry, or group of enterprises or industries, we determine that the minimum level benefits received by the respondent companies under the Sabatini Law are not counteravailable.

*E. IVA Deductions*

This program was not alleged by petitioner but was discovered in reviewing the financial statements of the respondent companies. Under Article 15 of Law 130, companies operating in Italy were granted a six percent credit on the balance of their value-added tax, the "imposta sul valore aggiunto" (IVA), for purchases of depreciable assets ordered between April 26 and December 31, 1983, and delivered before December 31, 1984. For purchases ordered or delivered after these dates, credits in the same amount were allowed only for purchases approved under Law 696 (*see* section II.B. of this notice). The last application date for credits under Article 15 of Law 130 was the year-end IVA return for 1984, due on March 5, 1985, while the last application date for credits under Law 696 was the year-end IVA return for 1986, due on March 5, 1987. We verified that, since the termination of these laws, there has been no renewal of the six percent credit. However, because credits could be carried forward or received as future cash payments a year or more after filing the return, we were unable to verify that qualifying companies would no longer receive lagged benefits.

Article 15 states that qualifying companies must operate in an industrial category listed under Groups IV through XIV of a ministerial decree of October 29, 1974. Groups IV through XIV include the following manufacturing and artisan activities: extraction of metallic and non-metallic minerals; food processing; wood processing; mechanical and metallurgical manufacturing; non-metallic mineral processing, which includes granite processing; chemical manufacturing; pulp and paper manufacturing; skins and leather processing; textiles and garment manufacturing; and rubber, resins and plastics manufacturing. If a company's

activities fell under one of these categories and it purchased depreciable assets, other than real estate, it could claim the deduction automatically in its IVA returns.

We verified that the credit is applied for simply by entering the proper amount in a year-end IVA return. There is no formal approval process. Rejections occur only if a tax audit reveals that a firm's activities fall outside Groups IV through XIV.

Because a six percent credit under Article 15 of Law 130 and under Law 696 was available to virtually all Italian manufacturing firms for depreciable assets related to manufacturing, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not counteravailable.

*F. Income Tax Programs*

The following programs were not alleged by petitioner but were discovered in reviewing the financial statements submitted by the respondent companies.

1. Reinvestment Fund Under Article 54 of DPR 597/73

Italian firms are permitted to claim a tax exemption for any capital gains earned on the sale of fixed assets, provided that the gains are reinvested in capital assets. Article 54 of Presidential Decree (DPR) 597/73 states that firms must establish a special liability fund for capital gains, and reinvest these tax-exempt gains in depreciable assets in the second fiscal year following the one in which the gains were realized.

We verified that this provision of Italian tax law is available to all entities in Italy, regardless of geographic location or type of industry. Receipt of this exemption is only contingent upon a company's subsequent use of the gains for reinvestment in capital assets. Because benefits under Article 54 of (DPR) 597/73 are available to all Italian firms and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that this provision is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable.

2. Accelerated Depreciation

Article 68 of DPR 597/73 sets forth rules governing the depreciation of assets under Italian tax law. The normal deductible depreciation of a company's assets is dependent upon the asset's classification in the Italian government's depreciation schedule. In addition, accelerated depreciation of an extra 15 percent above the normal rate can be claimed for the first three years after the asset is acquired.

We verified that normal rates of depreciation under Article 68 of DPR 597/73 are based on the useful lives of assets in individual industries and that the accelerated rate is available to all Italian firms regardless of geographic location or type of industry. On this basis, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, with the meaning of the Act and, therefore, is not countervailable.

3. Revaluation of Assets under Law 72 of 1983 and Law 576 of 1975

The Italian government allowed all companies to revalue assets in 1975 and again in 1983 to reflect market value rather than book value. The revaluations were necessary to account for periods of high inflation which preceded these years. Because we verified that all Italian firms, regardless of geographic location or type of industry, were permitted to revalue assets, and because we have no evidence that the GOI exercises discretion through an application and approval process in administering this program, we determine that these revaluations were not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, are not countervailable.

4. Contributions Under Article 55 of DPR 597/73

Article 55 of DPR 597/73, relating to "contingent assets," authorizes Italian companies to establish a reserve fund which postpones the payment of taxes on certain monies received by a company until such funds are distributed as profits to that company's shareholders. Funds received from the government in the form of a reimbursement, for example, would be included on the asset side of a company's balance sheet. Article 55 permits the company to shield temporarily such revenues from taxation by establishing an offsetting reserve fund on the debit side of its balance sheet, such that the money held on reserve becomes taxable only when distributed as profits.

Because we verified that Article 55 applies to all taxpayers regardless of geographic location or type of industry and because we have no evidence that the GOI exercises discretion through an application and approval process in administering the program, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of the Act and, therefore, is not countervailable.

**III. Programs Determined Not To Be Used**

We determine, based on verified information, that manufacturers, producers or exporters in Italy of certain granite products did not apply for, claim, or receive benefits during the review period for exports of certain granite products to the United States under the following programs:

*A. Rebates of Indirect Taxes Under Law 639*

Italian Law 639 authorizes the rebate of customs duties and certain indirect taxes upon the export of products containing certain raw materials. We verified that the respondent companies were not eligible for and did not receive benefits under this program because it is available only to mechanical industries.

*B. Export Credit Financing*

Under Italian Law 227, a medium-term export credit line is available to foreign purchasers that import Italian goods and services. Administered by Mediocredito Centrale, this program applies only to export credits of greater than 18 months. We verified that none of the respondent companies, nor their U.S. importers, had outstanding credit lines under this program during the review period.

*C. Mezzogiorno Regional Assistance Programs*

Accordingly to the responses, companies with facilities located in the mezzogiorno region of Italy are eligible for certain government programs aimed at the economic development of this region. The programs alleged by the petitioner under this regional development plan are: (1) National corporate tax exemptions; (2) local corporate tax exemptions; (3) capital grants; (4) interest rate reductions; and (5) reductions in social security payments. We verified that the first four programs were not used by the respondent companies during the review period. The last program, reductions in social security payments, is described in section I.C. of this notice.

*D. European Investment Bank (EIB) Lending*

The EIB is a European Community (EC) financial institution which offers loans to designated depressed areas of EC member states. EIB loans were found to be countervailable in our 1982 steel cases after specific allegations from the petitioners involved and a full-length investigation of their countervailability. *See Carbon Steel Products from Belgium,* 47 FR 39304, 39929 (September 7, 1982).

In the present investigation, the petitioner did not allege any EC programs in its petition. We first found references to loans denominated in ECUs, some involving the "BEI," in company financial statements submitted as part of the responses to our initial questionnaire. We requested information on these loans in a supplemental questionnaire; however, the respondent companies stated that these loans were not from any EC-related entity, nor were they provided or mandated by any government program. As we normally do for purposes of preliminary determinations, we took these statements at face value. At no time did petitioner come in with a formal allegation against EC programs.

During our verification of company responses in late April, we examined all loan contracts entered into by these companies and discovered that several loans, although disbursed through Italian MLTs, were funded by the EIB. Immediately following verification, we reviewed prior countervailing duty determinations involving EC programs, and noted that EIB loans had been determined to be countervailable in the 1982 steel cases. On May 25, 1988, we requested comments on these loans from all interested parties including, for the first time, the Delegation of the Commission of the EC. In a May 27, 1988, letter, the EC Commission pledged its full cooperation in our investigation. We detemined that it was appropriate to investigate these loans and, therefore, on June 1, 1988, we forwarded a questionnaire to the EC Commission, the respondent companies and the GOI. We received responses on June 14 and 15. Verification was conducted between June 29 and July 1, and included the EIB and the ECSC (discussed in Section I.B.). We received initial briefs on the EC verification on July 7 and rebuttal briefs on July 8.

By necessity, our investigation of EIB financing has been limited to abbreviated questionnaire and response, verification and briefing periods, covering a total of only five weeks. Due to time constraints, we were unable to take full advantage of our standard investigative procedures, which normally allow ample time for supplemental questionnaires, the thorough analysis of responses and comprehensive, in-depth verifications. In contrast, we were fully able to follow such procedures in our investigation of the program administered by the GOI. For example, we sent an initial questionnaire and four supplemental questionnaires to the GOI and respondent companies between August 1987 and March 1988. We spent weeks analyzing each response before seeking additional information or clarifications. We also spent more than four weeks verifying the GOI and company responses.

Despite the restrictions described above, based on the questionnaire response submitted by the EC and the subsequent verification conducted at the EIB's offices in Luxembourg, we have been able to determine the countervailability of the ECSC interest rebates received by one respondent company (*see* section I.B., above) and to establish that none of the respondent companies received EIB-sourced loans for firms located in depressed areas of the EC. The loans actually disbursed to the respondent companies through the EIB are funded by resources under the New Community Instrument (NCI) and not by EIB's own resources. The NCI is a pool of funds that is financed directly by the EC Commission.

This is the first countervailing duty investigation in which we have examined NCI loans and, for the reason described above, this initial investigation has been an unusually short one.

The EC Commission has cooperated fully in this investigation, yet had only a fraction of the time available to the other parties to participate in this investigation. Because of the limited time which was available to us, we find that difficult questions remain concerning both the linkage between NCI loans and the EIB's regular lending and the EIB decision-making process in granting global loans to intermediary banking institutions in member states. Without the benefit of having more information on the record, particularly with respect to a program that we are examining for the first time, the only way we are examining for the first time, the only way we could make a determination as to the countervailability of this program would be by resorting to the best information available.

We have calculated benefits under the NCI program and found that the benefits received by the respondent companies are *de minimis.* Furthermore, no company's subsidy rate would rise above *de minimis* were we to find this program countervailable and add *ad valorem* rates for this program to rates for the other programs. Therefore, due to the unique circumstances surrounding our investigation of the NCI program, we have decided to reserve judgment on the countervailability of this program until some future investigation allows us sufficient time and opportunity to examine the program in greater depth.

**IV. Program Determined Not to Exist**

We determine, based on verified information, that the following program does not exist. This program was described in *Certain Granite:*

*Loans Under Law 908*

During verification we found no evidence of the existence of Law 908 which was alleged to have provided subsidized loans at below market rates for certain industrial projects in northern and central Italy.

**Interested Party Comment**

*Comment 1:* Petitioner supports our preliminary determination that Decree 902 benefits are countervailable, based upon regional differences in interest rate, loan amount, repayment terms, and type of project eligible. Petitioner argues that there is no minimum benefit available to all companies in Italy under Decree 902, because a company in the Mezzogiorno is not eligible for the minimum Decree 902 benefit provided to companies in northern and central Italy. Petitioner contends that, where benefits vary from region to region, such benefits constitute regional subsidies, quoting *Groundfish from Canada* at 10045, "[d]espite the fact that the criteria for assignment to a tier [of benefits] may be neutral, the program nevertheless authorizes benefits to vary from tier to tier, and thus, from region to region." Petitoner further contends that it is immaterial that Decree 902 funds were provided to a wide range of industries, given the regional nature of the program.

Respondent companies and the GOI argue that the minimum Decree 902 benefit is available to all small- and medium-sized businesses in Italy and, therefore, does not constitute a countervailable regional subsidy. Respondents further argue that limitation to small-and medium-sized businesses does not render Decree 902 benefits countervailable. They cite the Department's *Final Affirmative Countervailing Duty Determination: Forged Undercarriage Components from*

*Italy* (48 FR 52111, 52116, November 16, 1983) (*Forged Undercarriage Components),* where the Department determined that a benefit that was generally available to small-and medium-sized Companies in Italy pursuant to a program similar to Decree 902 was not countervailable.

Respondents argue that the Department distinguishes between special benefits provided to particular regions and any minimum benefit available to all companies in determining whether a program confers a preferential regional benefit, quantifying the amount of the preference by comparing the special benefits to the minimum benefit. Respondents contend that the benefit is countervailable only if the company's benefit exceeds the benchmark (*i.e.,* the minimum benefit), citing the Deprtment's final determination in *Groundfish from Canada, supra,* at 10045.

*DOC Position:* A program is determined to be regional and, therefore, limited only when its funding is authorized by the central government to benefit only certain regions within its jurisdiction. In this investigation, we verified that Decree 902 provides varying levels of benefits, depending upon regional location, but that any small-and medium-sized business in Italy can receive at least the minimum Decree 902 benefit, regardless of location. We also verified that the respondent companies which received benefits under Decree 902 received only the minimum benefit.

Both petitioner and respondents cite *Groundfish from Canada,* in support of opposing arguments on this issue. In *Groundfish from Canada,* we found countervailable the IRDP program, which provided varying levels, or "tiers," of benefits to companies depending upon regional location. We determined the benefit under the IRDP program by taking the difference between the level of assistance actually provided to the companies under investigation and the level of assistance provided to companies located in areas eligible only for the minimum, or Tier I, benefit. We found countervailable only that portion of a company's benefit which exceeded the minimum-level benefit.

Applying the *Groundfish from Canada,* analysis to this case, the "benchmark" for determining whether the respondent companies received a countervailable subsidy would be the minimum benefit available under Decree 902. Because the respondent companies in question received only the minimum, or benchmark, Decree 902 benefit, there is no countervailable subsidy provided under this program to the producers of certain granite products from Italy.

*Comment 2:* Respondent companies argue that Zilio Graniti S.p.A., a company related to Savema S.p.A. (Savema), has never received any benefits under Decree 902. Respondents contend that the "Zilio Graniti" identified by the Department during verification as having received a loan under Decree 902 is not the Savema-related Zilio Graniti S.p.A., but rather is an unrelated company, Remo Zilio Graniti & Marmi S.r.l.

Respondent companies also argue that the purchase of Furrer stock by Henraux in 1986 eliminated any possible benefit from the Decree 902 loan granted to Furrer. Any countervailable subsidy conferred by the loan "flowed through" to Furrer shareholders at the time of the purchase and, therefore, would no longer benefit Furrer.

*DOC Position:* We have found the minimum level of benefits under the Decree 902 program to be not countervailable and that the respondent companies received the minimum level. Therefore, the issue of an individual company's receipt of benefits under Decree 902 is moot.

*Comment 3:* Petitioner contends that, due to the direct financial involvement and control by the GOI in Mediocredito Centrale, IMI and regional credit institutions, all medium- and long-term loans granted by such credit institutions to respondent companies should be considered to confer countervailable subsidies where the terms and conditions are inconsistent with commercial considerations. Petitioner further contends that granite producers which were not reasonable commercial credit risks have been able to borrow from these insititutions and that such borrowings amount to direct subsidization by the Italian government.

*DOC Position:* We disagree. Government ownership or control of a credit institution does not necessarily lead to the conclusion that the credit institution is operating in other than a commercial fashion, nor does it mean that the funds provided are part of a cuntervailable program. The fact that a credit institution is government-owned does not automatically make its loans preferential and countervailable. During verification, we reviewed all loan contracts for each company and identified the loan transactions which are given under government-mandated (GOI or EC) programs. We found no evidence that those that did not specify a government program were disbursed on a non-commercial basis.

*Comment 4:* Petitioner argues that the Italian respondent companies are uncreditworthy and, as such, any countervailable loans should be analyzed in accordance with the methodology for uncreditworthy companies set forth in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

Respondent companies assert that they are not uncreditworthy. Respondents argue that petitioner's uncreditworthiness allegation, filed immediately prior to verification and just two months before the final determination was both untimely and inadequate. In support of this argument, respondents cite previous determinations in which the Department dismissed such allegations on the basis of their untimeliness: *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Hollow Products from Sweden* (52 FR 5794, 5800, February 26, 1987) and *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Lime from Mexico* (49 FR 35672, 35677, September 11, 1984).

*DOC Position:* We agree that the petitioner's uncreditworthiness allegation was untimely and, therefore, we did not consider this allegation in this investigation. A creditworthiness determination requires a complex analysis of a company's present and past financial health, as reflected in its financial statements and accounts, its ability to meet obligations with its cash flow, and projections of future profitability based on market studies, country and industry economic forecasts, and project and loan appraisals. Not only the verification, but the entire investigation must be structured to accommodate this analysis. Petitioner had access to respondents' financial statements as of October 1987. Using those financial statements as a basis, they alleged uncreditworthiness on April 1, 1988, two days before our departure for verification, and approximately two months before our scheduled final determination.

*Comment 5:* Petitioner contends that the average long-term interest rates provided by the GOI should not be used as benchmarks in any long-term loan calculation because the rates include other than commercial long-term lending rates. Petitioner adds that short-term benchmark information provided by the GOI is also insufficiently supported, and that both the long- and short-term

interest rates wrongly include rates on public sector financing.

Respondent companies argue that we should not exclude public sector financing in calculating a benchmark interest rate for short-term loans, because government ownership of a company does not mean that the company is subsidized. Therefore, they argue that such financing should be included in our benchmark, absent verified information that it is not given on commercial terms.

*DOC Position:* Since no respondent company received a countervailable short-term loan, this issue is moot with regard to a short-term banchmark. Since the long-term interest rates provided by the GOI for the stone-processing industries included short-term rates and the GOI could not separate out purely long-term rates, we examined long-term commercial interest rates in Italy published by Morgan Guaranty (World Financial Markets), by the International Monetary Fund, and by the Organization for Economic Cooperation and Development. In each case, the long-term interest rates reported by these organizations were lower than those reported by the GOI. Therefore, we used the rates provided by the GOI in lieu of appropriate company-specific long-term benchmarks for the respondent companies for which we calculated benefits (for sub-loans under the EC's NCI; *see* Section III.D.).

*Comment 6:* Petitioner supports the Department's preliminary determination on the countervailability of the program allowing for reductions in social security payments for companies located in the Mezzogiorno.

Respondent companies argue that benefits received by Henraux under this program for employees at storage yards in the Mezzogiorno are not countervailable, because they do not benefit the production or exportation of the subject merchandise to the United States. Respondent companies contend that the Department confirmed during verification that all granite sold through Henraux's storage yards in the Mezzorgiorno is sold to Italian customers, citing the Henraux verification report at pages two and nine. As further support for this argument, respondents cite the Department's *Final Affirmative Countervailing Duty Determination: Porcelain-On-Steel Cooking Ware from Mexico* (51 FR 36447, October 10, 1986) (*Mexican Cooking Ware*), in which the Department concluded that low-interest loans to finance consumer goods manufactured in Mexico did not provide countervailable subsidies because they did not benefit the production or exportation of the subject merchandise to the United States. They also cite *Industrial Nitrocellulose from France: Final Results of Countervailing Duty Administrative Review* (52 FR 833, 836, January 9, 1987) which states that "benefits tied solely to the domestic sales of a product are not countervailable."

The GOI contends that, in accordance with the Department's policy and practice, reductions in social security payments for firms located in the Mezzogiorno is not a regional subsidy. As in the Department's determination concerning a labor assistance program in its *Final Affirmative Countervailing Duty Determination: Certain Steel Products from the Federal Republic of Germany* (47 FR 39345, September 7, 1982) (German Steel), the Mezzorgiorno programs are structured to increase overall employment in this historically underdeveloped area—not to target a specific region or industry. Further, the GOI argures that the Department mistakenly has defined the Mezzogiorno as a "region." The Mezzogiorno is not a region, they argue, because it includes more than the geographic south.

*DOC Position:* We disagree with respondents' assertion that social security payment reductions benefit only domestic sales. In *Mexican Cooking War,* we investigated the Fomex frontier program, which finances the production, inventory, purchase and sale of consumer goods manufactured in border zones, as well as consumer products produced elsewhere and sold in border zones. "Border zones" are regions 20 kilometers wide, parallel to the U.S.-Mexican borderline, and certain other "free zones" within Mexico. We verified that the loans under this program were tied by law to sales of products within Mexico.

In the current investigation, social security reductions for companies located in the Mezzorgiorno are not tied by law to domestic sales. There is no requirement in the program that benefits go to facilities which carry out domestic sales exclusively. Absent such an absolute link between benefits provided and domestic sales carried out, we cannot determine that no benefits are conferred on the production or export of granite destined for the United States. All sales may benefit equally from the social security reductions. Nothing prohibits a company from exporting granite from its facilities in the Mezzogiorno for which the social security reductions have been provided.

A program is determined to be regional and, therefore, limited when its funding is authorized by the central government to benefit only certain regions within its jurisdiction. In *German Steel,* we found that certain labor assistance programs were part of a national policy to relieve unemployment and were not limited to specific regions. Although the Mezzogiorno may include more than the geographic south, as the GOI argues, it is still a "region" for our purposes. It is a legally recognized area within Italy, which has been designated to receive certain special benefits not available elsewhere. Thus, we have determined the program providing social security payment reductions for companies located in the Mezzogiorno to be countervailable.

*Comment 7:* Respondent companies and the GOI contend that the Department should not have broadened its investigation from seven to seventeen companies merely because the original seven companies and their related companies each requested exclusion from any countervailing duty order that might be issued. Respondent companies argue that by requesting exclusion, the original seven did not "set themselves on a separate investigative track." Therefore, they contend that the Department should terminate its investigation with respect to the ten additional companies.

Respondents further argue that nothing in the Department's regulations or in the countervailing duty law suggests that a distinction should be made between companies requesting exclusion and other companies. They argue that section 355.38 of the regulations provides only for exclusion from a countervailing duty *order*, not from an *investigation.* Therefore, respondents contend that, until an order is issued (if ever), the Department should conduct the investigation in the same manner as it would if no exclusions had been requested.

Furthermore, respondent companies and the GOI contend that the Department had presumably deemed the original seven companies as representative, in that the Department only issued its initial questionnaire to those seven companies. They assert that the representativeness of the original seven companies, based on 1986 export statistics, is an objective characteristic which cannot be changed by the legal actions taken by the companies after the commencement of the investigation. As support for these assertions, respondents cite *Fabricas el Carmen, S.A. v. United States,* 672 F. Supp. 1465, 1479 (Ct. Int'l Trade 1987), remand order vacated as moot, 680 F. Supp. 1577 (1988) (*Fabricas*), for the proposition that Commerce erred in excluding those

companies that had filed timely exclusion requests from its "representative" sample of the investigated industry used to calculate the country-wide countervailing duty rate.

Petitioner asserts that the Department's regulations permit an investigation of all producers of the subject merchandise, without limitation, that the Department has discretion to decide how many companies to investigate, and that the Department's regulations make no provision for terminating the investigation of companies after they have been included in the investigation.

*DOC Position:* Petitioner correctly states that the Department's regulations permit an investigation of all producers of the subject merchandise, without limitation, and that the Department has discretion to decide how many companies to investigate. While our preference is to examine all manufacturers, producers and exporters of the subject merchandise in each investigation, this may not be administratively feasible when there are numerous potential respondents. In such circumstances, we collect either aggregate data on the industry as a whole, if this is feasible and verifiable, or we select a representative group upon which to base our determinations.

We initially requested the GOI to identify the largest manufacturers and exporters accounting for 60 percent of exports of the subject merchandise to the United States and to forward copies of the questionnaire to them. Once identified, these companies requested exclusion. As discussed in our preliminary determination, it is our policy to select additional companies when companies in our original group request exclusion. The court in *Fabricas* addressed the issue of how we calculate country-wide rates; it did not suggest how we should structure our investigation to cover as large a group of producers as we find appropriate and administratively feasible to investigate. In this investigation, we determined it was necessary to examine a broader representation of companies which petitioner alleged received countervailable benefits.

*Comment 8:* Petitioner argues that only companies which both produce *and* export granite should be excluded from any countervailing duty order that may be issued. Because exporters can easily ship granite products produced by another, subsidized firm, the inclusion of exporters which do not produce granite is the only way to ensure that countervailing duties are levied on all subsidized granite imports.

Respondents argue that the Department should exclude from any countervailing duty order all companies that have filed timely requests for exclusion that are either producers *or* exporters of the subject merchandise. Respondents cite the Department's regulations, section 355.38: "[*a*]*ny firm* which does not benefit from a subsidy alleged or found to have been granted to *other firms* producing *or* exporting the merchandise subject to the investigation shall, on timely application therefor, be duly excluded from a Countervailing Duty Order", 19 CFR 355.38 (1987) (emphasis added).

*DOC Position:* Because our final determination is negative, this issue is moot.

*Comment 9:* Petitioner argues that depreciation under Article 68 of DPR 597/73 provides benefits (*i.e.*, higher depreciation rates) for specific industries and, therefore, is countervailable. Because Italy's depreciation schedule classifications are industry specific rather than asset specific, and because rates vary across industries, petitioner argues that this tax provision should be determined to be countervailable. Petitioner further argues that the Department was unable to verify that a wide variety of industries used all of the tax programs.

Respondent companies and the GOI argue that Italian tax law provisions concerning accelerated depreciation, revaluation of fixed assets, and capital gains reinvestment provide no countervailable benefit because they apply generally to all enterprises in Italy. In support of this contention, respondents cite *Bethlehem Steel Corp.* v. *United States*, 7 CIT 339, 590 F. Supp. 1237, 1245 (Ct. Int'l Trade 1984) ("laws of taxation are not subsidies to the taxpayer * * * when they present equal opportunities to reduce the exaction"); and *Carlisle Tire & Rubber Co.* v. *United States*, 5 CIT 229, 564 F. Supp. 834, 839 (Ct. Int'l Trade 1983) (*Carlisle*) (accelerated depreciation programs that were generally available to entire business community in investigated country were not countervailable benefits).

*DOC Position:* We verified that all the income tax programs under investigation are available to all Italian firms and that IVA deductions are available to Italian firms in virtually all industries. Furthermore, we established at verification that these provisions are widely used and, therefore, have found them to be not countervailable, including accelerated depreciation under Article 68 of DPR 597/73. By their nature, depreciation rates vary by both industry and by asset because the useful lives of assets differ among industries and among types of assets. *See*, for example, the Class Life Asset Depreciation Range System (Rev. Proc. 77-10, 1977-1 C.B. 548 (RR-38)). We found nothing unusual in the Italian depreciation schedules to suggest that they benefit a specific enterprise or industry or group of enterprises or industries.

*Comment 10:* Petitioner argues that financing under the Sabatini Law is countervailable given that different interest rates are available to different regions in Italy. Furthermore, petitioner argues that a specific group of industries receives these benefits, *i.e.*, companies which use machine tools and production machinery valued at over L. 1,000,000. They contend that the evidence of industry use on the record is insufficient to determine that Sabatini Law financing is not limited. Petitioner contends that we should consider verification of the Sabatini program to be inadequate because the GOI refused to allow the verification team to review documents on the approval process for this program. In addition, petitioner believes that an extra benefit is conferred on Sabatini Law recipients through the stamp and registration tax exemption.

Respondent companies and the GOI argue that verified evidence on the record demonstrates that benefits under the Sabatini Law are available to all Italian enterprises and that they do not benefit an individual industry or group of industries or a particular geographic region of Italy. Respondents argue that benefits under a program are not countervailable simply because minimum eligibility criteria exist, such as the Sabatini Law requirement that equipment purchases be valued in excess of L. 1,000,000. In support of this argument they cite *PPG Industries, Inc.* v. *United States*, 662 F. Supp. 258, 266 (CIT 1987) ("the mere fact that a program contains certain eligibility requirements for participation does not transform the program into one which has provided a countervailable benefit") and *Carlisle, supra*, at 836 note 3 (certain tax benefits are not countervailable simply because not every company could meet the specified eligibility criteria).

*DOC Position:* During this investigation, we reviewed both the laws and regulations governing various Italian programs as well as the actual availability and receipt of benefits under such programs. In each instance, we made a factual determination as to whether benefits were conferred in such a manner as to be properly considered

limited to a specific industry or group of industries.

We verified that companies throughout Italy are eligible for Sabatini benefits, although at varying levels. We also verified that the respondent companies which received Sabatini benefits received the minimum benefit. *See* section II.D. and DOC Position on Comment 1. Eligiblity for Sabatini benefits is based on objective and precise criteria specified in the law and amending decrees, and we verified that each company which used this program qualified and was approved for Sabatini Benefits based on these criteria. We saw no evidence that the GOI exercises discretion or deviates from these criteria in granting Sabatini benefits. Furthermore, we verified that thousands of companies in virtually every sector have received Sabatini benefits.

The stamp and registration tax exemption applies to all companies that qualify under the Sabatini Law. We have determined that the minimum Sabatini benefit is not countervailable because it is not limited to a specific enterprise or industry, or group of enterprises or industries. The same holds true for the stamp and registration tax exemptions provided for under the Sabatini Law.

*Comment 11:* Petitioner argues that contributions for the purchase of electronic equipment granted under Law 696 are countervailable due to the Department's findings at verification that this program targeted manufacturing and mining. Petitioner asserts that, while it appears that a large number of industrial groups have benefitted from Law 696, there likely were many more companies deemed ineligible to receive benefits. Finally, petitioner argues that the Department should find the program countervailable because we received information during verification that Law 696 was terminated due to EC objections that Italy was "engaged in subsidization."

Respondent companies and the GOI argue that verified evidence on the record demonstrates that benefits under Law 696 are available to all Italian enterprises and that such benefits do not benefit an individual industry or group of industries or a particular geographic region of Italy. Furthermore, respondents argue that the fact that Law 696 benefits are limited to certain small- and medium-sized companies does not make the benefit countervailable, citing *Forged Undercarriage Components, supra.*

*DOC Position:* At verification, we confirmed that benefits under Law 696 are available to all small-and medium-sized companies in Italy that purchased qualifying electronic equipment. We also examined the application and review process carried out by the Ministry of Industry and Commerce and observed that the approval and rejection of applications was based solely upon criteria set forth in the law (*i.e.*, that the company must be a small- or medium-sized enterprise and that it must actually purchase a piece of electronic equipment). Therefore, we found no governmental discretion outside the law in the administration of the Law 696 program. Finally, a determination by the EC that a program of an EC member state is (or is not) a subsidy is not pertinent to the Department's independent determination as to whether the same program constitutes a countervailable benefit within the meaning of the Act.

*Comment 12:* Respondents argue that if benefits under the Sabatini Law, Law 696, and Law 130 are found to be countervailable, such benefits should be allocated according to the Department's grant methodology, because they are all provided in the form of lump sum payments. According to respondents, such benefits should be allocated over the average useful life of the assets used to produce the subject merchandise, as set forth in the U.S. Internal Revenue Service 1977 Class Life Asset Depreciation Range System (Rev. 77–10, 1977–1 C.B. 548), or over ten years for assets used in the production of granite.

Respondent companies argue that to the extent the Department finds countervailable the benefits provided under Law 696, Law 130, Law 614, or Decree 902 (with respect to northern and central Italy), the contervailing duty rate set in the final determination must take into account the fact that benefits under these programs have been discontinued. Respondents cite *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod from Malaysia* (53 FR 13303, 13307, April 22, 1988), *Certain Textile Mill Products from Mexico: Final Results of Countervailing Duty Administrative Review* (52 FR 45010, 45012, November 25, 1987), And *Final Affirmative Countervailing Duty Determination: Acetylsalicylic Acid (Aspirin) from Turkey* (52 FR 24494, 24498, July 1, 1987), in support of this argument.

*DOC Position:* We have determined that the minimum level of benefits received by the producers of certain granite products under Law 902, Sabatini Law, Law 696 and Law 130 are not countervailable. Therefore, these issues are moot. Since the benefit under Law 614 is *de minimis*, the question of issuing a separate duty deposit rate is also moot.

Comment 13: Petitioner contends that the provision of preferential transportation rates under Law 887 is countervailable because it provides a preferential benefit to a specific group of enterprises or industires. Petitioner bases this contention on the following conclusions: (1) The preferential transprotation rates constitute a regional program applicable only to shipments from the Italian islands to the Italian mainland, and (2) the program is also industry-specific, providing lower rates only for shipments of raw mineral substances.

Respondent companies and the GOI argue that, because the reduced rail rates provided by the Italian State Railway are available to any consumer of minerals transported by rail from the Italian islands to the Italian mainland, these rates do not constitute countervailable benefits. They further assert that the industries which consume the minerals that benefit from reduced rail rates are numerous and diverse. In addition to the Italian stone industry, they cite industries that consume Sardinian coal (*i.e.*, steel, glass, textile, chemical, and electrical utilities) as examples of eligible beneficiaries of reduced rates. Respondent cite the *Final Negative Countervailing Duty Determination: Certain Softwood Products from Canada* (48 FR 24159, 24167 (May 31, 1983) as support for this argument, based on the "legal principle" articulated in that case that a benefit is not countervailable if it is available to numerous and diverse industries.

Respondent companies also argue that the reduced rail rates do not confer a countervailable regional subsidy. They state that the only regional element to the reduced rail rates involves the raw mineral producers and not the consumers. Therefore, they argue that any regional benefit that may be provided goes only to the mineral producers (granite quarriers) and not to granite producers subject to this investigation.

Respondents further point out that reduced rail rates are paid or bestowed on granite blocks. They argue that, at most, granite producers may receive an upstream subsidy from this benefit on granite blocks, which are inputs used in the manufacture or production of the subject merchandise. They assert that any benefit related to these blocks would have to be analyzed under the upstream subsidy provision of the contervailing duty law, which requires an allegation of upstream subsidization by the petitioner.

*DOC Position:* Information submitted to us by the GOI prior to and during verification gave no indication that any respondent company actually received rail transportation benefits under Law 887 during the review period. Consequently, we did not press the GOI for extensive data regarding actual use of this program by Italian industrial groups. At verification, GOI representatives specified four raw mineral substances which qualify for the 30 percent rail reduction under Law 887: Oil, clay, marble and granite. The Department received no documented information from the GOI beyond this list of four substances during the course of this investigation. We therefore determine that reduced rail rates under Law 887 are limited to a specific enterprise or industry, or group of enterprises or industries. *See* discussion under Section I.A.

Furthermore, we disagree with respondents' argument that transportation benefits for granite blocks must be analyzed in the upstream subsidies context. The benefits discovered during company verification clearly were bestowed upon the respondent companies and not upon upstream input suppliers. Through examination of rail invoices, it was apparent that these companies paid for the transport of the granite blocks and, as such, directly benefitted from the reduced rate for rail transportation from the Italian islands.

*Comment 14:* Respondent companies argue that if reduced rail rates constitute countervailable benefits, the appropriate methodology is to calculate a benefit based on the difference between (1) the cost of commercially available transport alternatives (*e.g.*, trucking costs) and (2) the price that respondents actually paid as a result of reduced rates. They argue further that the benefit should be allocated over the combined sales of granite, travertine and marble sales, because reduced rates are available for shipment of all minerals from the Italian islands to the mainland.

*DOC Position:* We disagree. The benefit is the difference between what the company would have paid absent the 30 percent rail rate reduction and what it actually paid given the 30 percent reduction. Furthermore, verified information shows that the respondent companies benefitted from reduced rail rates for transport of granite blocks only. We therefore allocated the benefit solely over the total granite sales of the companies in question.

*Comment 15:* Petitioner agrees with the Department's preliminary finding that Law 614 local tax concessions are countervailable due to their regional nature, but disagrees with the calculation methodology. Petitioner argues that the *ad valorem* rate for Law 614 benefits should not take into account the effect of the local tax (ILOR) reduction on the national corporate (IRPEG) tax liability. They argue that this approach is akin to the granting of an offset against the countervailable local tax subsidy by reason of the increase in national corporate taxes paid. They contend that such an offset is not in accordance with section 771(6)(b) of the Act, which places limitations on allowable offsets. Instead, petitioner argues that the entire amount of the local tax concession by itself should be measured in the year received.

Petitioner also argues that "it is the Department's policy to disregard secondary tax effects on countervailable subsidies," citing *Groundfish from Canada, supra,* and argues that the ILOR tax is a national, not a local tax.

Respondents state that they are in agreement with the Department's calculation in the preliminary determination of the Law 614 benefit to Granitex, taking into consideration the net impact of the benefit on the company's total corporate income tax liability. They state that the so-called local ILOR tax is not comparable to the state income taxes existing in the United States. They asert that ILOR and IRPEG are merely two elements of a single unified income tax established by the national Italian government.

*DOC Position:* We agree with the assessment of respondents that the ILOR tax is a local tax in name only. ILOR is imposed by the national government and calculated, as is IRPEG, in the national tax return. The tax incidence at issue in *Groundfish from Canada* was highly speculative; it involved a future and uncertain effect that was not simultaneously nor directly calculable from the tax benefit in question. In contrast, IRPEG liability bears a simple relationship to ILOR liability and, in fact, cannot be calculated until ILOR liability is calculated. Therefore, we have calculated the benefit under Law 614 based on the company's total corporate income tax liability, including both ILOR and IRPEG. As such, our calculation takes into account the primary, and not the secondary, tax effects of the program. The offset issue is not relevant in this situation.

*Comment 16:* Petitioner submits that the export statistics provided by the GOI are unreliable and should not be used as part of the calculations for any program found to be countervailable. Because not all exporters of granite to the United States were investigated, petitioner further argues that only the sales figures of the companies under investigation may be used in determining the *ad valorem* benefit under specific programs.

*DOC Position:* Because no export programs have been found to be countervailable, we have not used export statistics in any of our calculations. In performing our calculations to determine the *ad valorem* benefit under specific domestic programs, we have used only the relevant sales values of the companies under investigation.

*Comment 17:* Respondents argue that the Department must base calculations of any countervailing duty rate in this investigation on sales of all respondents, not just on sales of those that did not request exclusion. They contend that the Department's general policy is to calculate a single, country-wide countervailing duty rate, as provided for under section 706(a)(2) of the Act, which states that a countervailing duty order presumptively applies to all of the subject merchandise exported from the country under investigation. They contend that neither the statute nor the existing or proposed regulations require that the Department remove from its calculation of a country-wide countervailing duty rate the sates revenues of the companies which requested exclusion.

Respondents also cite *Fabricas, supra,* in support of this assertion. They argue that the facts of *Fabricas* are similar to this investigation, with both cases involving hundreds of companies from which a small representative group was selected on which to base the investigation. In *Fabricas,* the Court of International Trade (CIT) held that it was unreasonable for the Department to exclude certain investigated companies, which did not receive greater than *de minimis* benefits, from the sample upon which a representative country-wide rate might be based.

*DOC Position:* It is our practice to calculate a country-wide rate which is a weighted-average rate for all companies whose individual rates are neither *de minimis* nor significantly different from the rates of other companies. In this investigation, no respondent company's individual rate is above *de minimis.* Therefore, we have not calculated country-wide rates for those programs determined to be countervailable.

*Comment 18:* Respondents state that the only exceptions to the statutory presumption in favor of calculating a country-wide rate are: (1) If the Department finds that a "significant differential" exists between the

subsidies received by the respondent companies, or (2) if one or more of the companies is a state-owned enterprise. Respondent asserts that none of the respondent companies in this investigation is owned by the state. They argue that any potential countervailable subsidies in this investigation are "miniscule" and that, therefore, it is inconceivable that any significant differential might exist in this investigation. Respondents further argue that, even if the weighted-average subsidy for all respondents under investigation were five percent, and the individual company subsidy amounts were to range from zero to ten percent, the Department lacks the authority to calculate more than one countervailing duty rate that would apply to the subject merchandise, as it would be illogical and unfair to calculate a single, country-wide rate based only on data for the subsidized companies but that would apply to all non-excluded companies, including unsubsidized companies.

*DOC Position: See* DOC Position on Comment 17.

*Comment 19:* Petitioner points out a number of problems with, or inaccuracies in, the GOI exclusion certification. Based on these problems, petitioner argues that the Department should not exclude any of the requesting companies from any countervailing duty order that may be issued. Petitioner argues that receipt of countervailable benefits by a company requesting exclusion must lead the Department to reject the GOI exclusion certification. Furthermore, petitioner states that all the companies requesting exclusion received loans from the EIB or ECSC and, therefore, should not be granted exclusion.

Respondents assert that the vast bulk of the information provided to the Department as part of the exclusion certification was confirmed during verification, with only minor exceptions. Therefore, they argue that the exclusion requests should be granted. Respondents further argue that statutory and regulatory authority does not require government certification as a prerequisite to granting exclusion, aside from the proposed and as yet unadopted regulations. Absent specific statutory or regulatory authority, respondents argue that the Department may not impose an additional requirement that a request for exclusion may not be granted absent government certification. Respondents state that even if subsidies have been received by companies requesting exclusion, the aggregate value of any subsidies is *de minimis.* Therefore, the exclusion requests should still be granted.

*DOC Position: See* discussion under "Exclusion Requests" section.

*Comment 20:* Respondents argue that the Department should terminate its investigation of EC-related loan benefits, because the Department did not initiate a countervailing duty investigation specifically against imports of granite from the EC. They contend that the Department may not countervail subsidies received from EC-affiliated organizations in a countervailing duty investigation involving merchandise from a single EC member state (*i.e.,* Italy), asserting that the investigation is limited strictly to benefits provided by the GOI or subdivisions thereof. Respondents further argue that, because the Department calculates a single countervailing duty rate applying to all imports of the subject merchandise from a given country, the Department must limit its investigation to subsidies provided by the country under investigation and its political subdivisions. Otherwise, respondent companies assert that if the Department were to find that certain benefits provided by EC organizations confer countervailable subsidies on producers located in that member state, calculation of the subsidy rate based only on the benefits received by companies located in that member state (as opposed to the EC as a whole) might be distorted.

Petitioner argues that the Department has investigated and countervailed EC programs in several prior cases against specific EC member states, citing the 1982 steel investigations involving Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, and the United Kingdom; and the 1985 table wine investigations involving France, the Federal Republic of Germany, and Italy. Because the EC is an "association" (within the meaning of 19 U.S.C. 1677(5) and 19 U.S.C. 1303(a)(1)) of member states, one of which is Italy, subsidies to Italy from the association may be countervailed under the law.

*DOC Position:* It is true that the Department has countervailed EC programs in prior cases against specific EC member states. The most recent example of this is found in our *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers From the Netherlands,* 52 FR 3301 (February 3, 1987) (*Netherlands Flowers*). There, as in previous cases, we examined EC programs alleged by petitioner to provide subsidies to the subject merchandise produced in a specific member state. While petitioner in the current investigation did not file an allegation of EC subsidies, we discovered the programs during the course of verification and, after soliciting comments from the interested parties, including the EC, we deemed it appropriate to examine these programs.

Section 771(3) of the Tariff Act of 1930, as amended (the Act) 19 U.S.C. 1677(3) (1982) defines the term "country" as: "a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, *may include an association of two or more foreign countries,* political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States." (Emphasis added.) The EC is an association of two or more countries as provided for under section 771(3).

The Department's general policy of calculating country-wide rates does not prohibit us from examining EC benefits in this investigation. Nor does it mean that calculation of a subsidy rate based only on benefits received by companies located in a single member state (rather than the EC as a whole) would somehow be distorted. In *Netherlands Flowers,* we found a joint Government of the Netherlands (GON) and EC program, Aids for the Creation of Cooperative Organizations, to be countervailable. We took the benefit from both the EC and the GON to Dutch flower growers and allocated the total over sales of those same flower growers. There is no distortion in a methodology which attributes benefits, whether provided by the national or some other level government, to a specific company or industry in a specific country, and allocates those benefits over the sales of that specific company or industry to arrive at the subsidy rate.

*Comment 21:* Petitioner asserts that there are three subsidies available under the ECSC loan program: (1) The five percent interest rebate over five years; (2) the five-year grace period on the loans; and (3) the interest rate on the loans. Petitioner therefore contends that the Department must calculate the total subsidy value of the ECSC loan using all three subsidy components.

*DOC Position:* We agree with petitioner that the five percent interest rebate is countervailable; but, as discussed in Section I.B., we disagree that any other aspect of the loans are countervailable with respect to certain granite products.

*Comment 22:* Petitioner argues that the ECSC conversion loan provided to one of the respondent companies is

countervailable, because such loans target a specific enterprise or industry or group of enterprises or industries. Petitioner alleges that the loans are available only to firms which hire redundant coal and steel workers, and that they are given only in specific areas where there are steel mills or coal mines with redundant workers. Petitioner further alleges that the designation of "priority areas" makes this a countervailable regional subsidy program. Finally, petitioner contends that the program is not used by a wide variety of industries throughout the EC. Petitioner further contends that these loans were found countervailable in *Carbon Steel Products From Belgium* (47 FR 39323) (1982) (*Belgian Steel*) and are not part of an EC-wide unemployment policy.

Respondents argue that the ECSC loan provides no countervailable benefit because the loan (1) was provided as part of an EC-wide policy to relieve unemployment, and (2) was intended to benefit workers in the coal and steel industry, not the granite industry. Respondents cite previous Department determinations in support of their contentions: In *German Steel, supra,* at 39349–50, the Department determined that a program that was part of a country-wide unemployment policy provided no countervailable subsidy despite the fact that certain areas received more benefits under the program than did others. And in *Groundfish From Canada,* at 10066, the Department stated that the *German Steel* determination stands for the proposition that no countervailable benefit is provided in those instances in which "assistance provided as part of the national policy to relieve unemployment was provided on identical terms across [the investigated country]," and "regional designations were merely for administrative convenience."

*DOC Position:* As discussed in the verification report, ECSC conversion loans are available to an individual firm in any industry in any region of a member state if the firm proposes a project that is capable of being filled by redundant ECSC workers. The loan can cover up to 50 percent of the investment costs. These loans have in fact been utilized by firms in a broad range of industries. They are also available to and have been approved for firms located in regions that are not considered to be coal and steel areas.

In contrast, the interest rebate for certain ECSC loans is subject to regional variations based solely on location in particular regions. Because of its location in a "priority" region, Fratelli Guarda received interest rebates that would not have been available had the company been located outside a "priority" region. As such, interest rebates on ECSC conversion loans are not provided on identical terms across all regions of EC member states, nor are the regional designations used merely for administrative convenience.

*Comment 23:* Petitioner argues that the Department should allocate the ECSC loan benefit over five years, because the interest rebate on the ECSC loan is disbursed in ten bi-annual payments, beginning January 19, 1986. Petitioner further argues that the Department should not use an allocation method at all, when the allocation method by itself causes a *de minimis* result. Otherwise the remedial effects of the countervailing duty law will have been made unavailable to the domestic industry.

Respondents argue that, to the extent that the ECSC loan is determined to confer a countervailable benefit, the Department should allocate that benefit over the ten-year life of the loan.

*DOC Position:* These interest rebates are made only on a portion of the loan and are made as discreet, bi-annual cash payments over the first five years of a ten year loan. Therefore, we are expensing each such payment to the period of receipt, rather than allocating benefits over time. In its accounts, Fratelli Guarda does not credit the rebates to interest payable on the loan.

*Comment 24:* Petitioner contends that EIB loans are still countervailable, as determined in *Belgian Steel,* because they are limited to specific "unbalanced" regions in the EC. Petitioner further contends that loans from the EIB's own funds and NCI loans should be treated as two distinct programs by the Department, arguing that they are separate programs even though both are administered by the EIB. As support for this argument, petitioner cites the fact that the EC created a separate fund when it first created the NCI in 1978, instead of just increasing the capitalization of the EIB in order to increase lending. Petitioner contends that the Department has examined programs administered by the same organization or entity and determined that they constitute separate countervailable subsidies. Petitioner cites as examples the General Development Agreements and the Special Recovery Capital Projects programs, *Groundfish from Canada* at 10048–49.

Respondents contend that the countervailability of NCI loans is a matter of first impression for the Department. Respondents further contend that the prior finding on EIB loans in *Belgian Steel* has no precedential value in determining the countervailability of NCI loans.

*DOC Position:* Because of our determination discussed in section III.D., we have not reached this issue.

*Comment 25:* Petitioner contends that regional location is a criterion for the granting of both EIB and NCI loans, that the loans granted for one region are not "interchangeable" with those granted for another, and that the loans are made at rates inconsistent with commercial considerations. Petitioner further contends that "few different companies actually receive EIB and NCI loans" and that there is no evidence to prove otherwise. In support of this argument, petitioner cites page 12 of the EC verification report, which lists several industries which EC officials state received EIB and NCI loans, but which does not provide a breakdown of companies receiving loans within each industry. For the program to be found not countervailable, there must be evidence on the record to refute petitioner's allegation that the loans are provided to a specific group of industries, and that oral statements by EC officials do not constitute verified evidence. Petitioner contends that "there is no documentary evidence which supports statements made by EC officials," and that "[t]he EC officials' statements seem to have been accepted at face value."

Respondent companies argue that the NCI financing received by certain respondents provides no countervailable benefit because such financing is available (1) to all regions of the EC and Italy, (2) to a broad range of industrial sectors, and (3) on commercial terms specified by the intermediary bank that actually lends the funds to the ultimate borrower.

*DOC Position:* Although documentation on the record is incomplete due to the previously noted time constraints and unusual circumstances governing this aspect of our investigation, documentary evidence does exist. Among other documentation, we reviewed industry breakdowns published in annual reports and policies and procedures discussed in official publications. For the reasons discussed in Section III.D., we have decided that we should not make a determination on NCI financing based on an incomplete record.

*Comment 26:* Respondents contend that all EIB loans are available only for investment projects (*i.e.,* plant

modernization or expansion, or the construction of new production facilities). They further contend that the EIB loan to Giuseppe Furrer (Furrer) provides no countervailable subsidy toward Furrer's granite exports, because Furrer produces only marble.

Petitioner argues that, since Furrer exports granite, its operations and facilities are also involved with granite. Insofar as the company must take possession of the granite at times, such that it is physically present at the plant, and that company officials must process paperwork involved in selling and shipping granite, petitioner argues that the benefit of this loan should be allocated to Furrer's total sales.

*DOC Position:* Because of our determination discussed in Section III.D., we have not reached this issue.

*Comment 27:* Petitioner contends that the Department collected "no useful data" during verification regarding ECU-denominated loans whose contracts show no financing from the ECSC or EIB. Absent such verified information, petitioner contends that the Department must determine that these loans are countervailable where they are provided at interest rates and on terms inconsistent with commercial considerations. Petitioner argues that, according to information on the record, the Department found that ECU-denominated loans to the respondent companies are at interest rates inconsistent with commercial considerations.

Respondent companies argue that ECU-denominated loans were provided to several respondent companies entirely on commercial terms from commercial sources and without the involvement of the EIB or other EC-affiliated institutions. Respondents contend that ECUs are simply another type of currency in which Italian companies may borrow. Respondents further contend that EC-related loans to the respondent companies did not confer any countervailable benefit.

*DOC Position:* When we examine loan contracts and other documentation and see no evidence of government action or presence, we do not conclude that we lack verified information. In this investigation, we are relying upon verified information to find that ECU-denominated loans that were not disbursed through the ECSC or EIB involve no countervailable benefits of any kind. We examined loan contracts, among other documentation, for each loan and did not find any evidence that the EC or the GOI played any role in negotiating or specifying contractual terms for these loans. In contrast, contracts for loans financed by the ECSC or the EIB specifically identify these institutions. We also established to our satisfaction that commercial banks in EC member states frequently lend in ECUs. Petitioner has offered no information or documentation that contradicts our verified information. Finally, because interest payments on these loans are calculated based on ECUs, Italian lire interest rates are not the appropriate benchmarks.

*Comment 28:* Petitioner asserts that its interests have been prejudiced by the acceptance of the GOI brief commenting on the Department's verification of the government responses. This brief was filed on June 13, 1988, but petitioner received it on June 17, 1988, one week after rebuttal briefs were due. Due to untimeliness, petitioner argues that the Department should not consider this brief. Furthermore, petitioner objects to the "late filing" by the GOI of eleven exhibits related to certification and to the Department's procedures in (1) extending normal deadlines to accomodate the GOI, and (2) not informing petitioner of the process. Petitioner states that the eleven exhibits must be rejected by the Department and that the Department should base its final determination regarding certification on the "properly noticed and conducted verification."

*DOC Position:* We allowed petitioner an extension of time to respond to the GOI brief of June 13, 1988. In so doing, we consider that any unfairness was eliminated in the briefing process. Petitioner filed its rebuttal to the GOI brief on July 7, 1988. Therefore, we will not reject the GOI brief and have considered it in making our final determination.

The eleven certification exhibits referred to by petitioner were submitted to the Department in Washington and were also reviewed by Department officials in Rome. However, we did not formally accept these documents as verification exhibits and did not take them into consideration in making our final determination on the exclusion/certification issue. Our final determination on the exclusion/certification issue is based solely on information reviewed and obtained during verification in Italy in April 1988.

*Comment 29:* Petitioner complains that it was disadvantaged by the following: (1) Public exhibits to the EC verification report were supplied to petitioner approximately five hours before initial comments were due; (2) the confidential version of the EC verification report was not provided to petitioner prior to the deadline for filing its initial comments; (3) confidential EC verification exhibits were not provided to petitioner; (4) the Department granted petitioner only 48 hours to comment on the EC verification report; and (5) respondents had access to "substantially more" information than petitioner.

*DOC Position:* Petitioner had equal opportunity to comment and equal access to information as that afforded respondents. All parties were aware that verification of the EC response occurred between June 29 and July 1, that the verification report was completed and sent to all parties on the first business day, July 5, following the end of verification, and that the final determination, which could not be extended, was due approximately one a week later on July 13.

Furthermore, petitioner was the first party to observe the public verification exhibits. Release of the confidential version of the verification report, which contained only one sentence and several numbers that were not in the public version and no substantive information not reported in the public version, was delayed for all parties except the EC. As it was, the EC did not even file a brief, but chose to provide only factual corrections to the report. In no respect did petitioner have access to less information than respondents.

**Verification**

In accordance with section 776(a) of the Act, except where noted in this determination, we verified the information used in making our final determination. We followed the standard verification procedures including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents of the respondents. Our verification results are outlined in detail in the public versions of the verification reports which are on file in the Central Records Unit (Room B-099) of the Main Commerce Building.

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since we have determined that only *de minimis* countervailable benefits are being provided to manufacturers, producers or exporters in Italy of certain granite products, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

July 13, 1988.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 88-16214 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-DS-M

## National Bureau of Standards

## National Oceanic and Atmospheric Administration

**[Docket No. 61236-7140]**

## Proposal To Retain the Unit Known as the U.S. Survey Foot

**AGENCIES:** National Bureau of Standards, National Oceanic and Atmospheric Administration, Commerce.

**ACTION:** Request for Public Comments.

**SUMMARY:** The purpose of this notice is to solicit comments from land surveyors and mappers, Federal, state and local officials, and from members of the public, regarding a preliminary decision by the Director of the National Bureau of Standards and the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, to retain the unit known as the U.S. Survey Foot, as defined in a 1959 **Federal Register** notice. A final decision will not be made until all comments received have been reviewed.

**DATE:** Comments must be received on or before November 16, 1988.

**ADDRESS:** The comments should be sent to Director, Charting and Geodetic Services, N/CG, WSC-1, Room 1006, National Ocean Service, NOAA, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Mr. James E. Stem, N/CG1x4, Rockwall Building, Room 619, National Geodetic Survey, NOAA, Rockville, Maryland 20852; phone: 301-443-8749.

**SUPPLEMENTAL INFORMATION:** A **Federal Register** notice published jointly on July 1, 1959 (24 FR 5348) by the Directors of the National Bureau of Standards and the U.S. Coast and Geodetic Survey refined the definition of the yard in metric terms. The notice also pointed out the very slight difference between the new definition of the yard (0.9144 meter) and the 1893 definition (3600/3937 meter), from which the U.S. Survey Foot (1200/3937 meter) is derived. The "international foot" of 0.3048 meter is shorter than the U.S. Survey Foot by 2 parts per million.

The 1959 notice stated that the U.S. Survey Foot would continue to be used "until such time as it becomes desirable and expedient to readjust the basic geodetic survey networks in the United States, after which the ratio of a yard, equal to 0.9144 meter, shall apply."

The readjustment of the basic geodetic survey networks by the Office of Charting and Geodetic Services, National Ocean Service, is complete. Hence a decision on whether to adopt the foot as derived from the international definition of the yard in accordance with the above-quoted portion of the 1959 notice will need to be made.

Since 1959, the U.S. Survey Foot has remained dominant in land surveying, mapping, and related activities in the United States, and still is incorporated in legal definitions in many states as well as in practical usage. Hence, it has tentatively been decided not to adopt the international foot of 0.3048 meter for surveying and mapping activities in the United States. Before reaching a final decision in this matter, it is deemed appropriate and necessary to solicit the comments of land surveyors, Federal, state and local officials, and any others from among the public at large who are engaged in surveying and mapping or are interested in or affected by surveying and mapping operations. A final decision will be reached after careful consideration of all the comments that are received in response to this notice. The final decision will be published in the **Federal Register** and will be publicly announced in other media as deemed appropriate.

Even if the final decision affirms the preliminary decision not to adopt the international definition of the foot in surveying and mapping services, it should be noted that the Office of Charting and Geodetic Services, National Ocean Service, per a 1977 **Federal Register** notice (42 FR 15943), uses the meter exclusively and plans to provide the new coordinates resulting from the adjustment of the basic geodetic survey networks in meters. Technical advice in converting coordinates between meters and feet will be given to those requesting it.

The effect of this notice is to allow the U.S. Survey Foot to be used indefinitely for surveying and mapping in the United States. No other part of the 1959 notice is in any way affected by this notice.

Date: May 31, 1988.

**Ernest Ambler,**

*Director, National Bureau of Standards.*

Date: May 16, 1988.

**John J. Carey,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.*

[FR Doc. 88-16174 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-08-M

## National Technical Information Service

## Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

### Department of Agriculture

SN 6-905,208 (4,743,266)
Process for Producing Smooth-Dry Cellulosic Fabric with Durable Softness and Dyeability Properties

SN 7-155,264
Cloned Genes Coding for Avian Coccidosis Antigens which Induce a Cell-Mediated Immune Response and Method of Producing the Same

SN 7-173,910
Method for Producing Trichothecenes

SN 7-183,810
Use of Boron Supplements to Increase In Vitro Production of Hydroxylated Steroids

SN 7-186,990
Persistent Attractants for the Mediterranean Fruit Fly, the Method of Preparation and Method of Use

### Department of Health and Human Services

SN E-117-88
A Percutaneous Device to Keep the Pulmonary Artery Open

SN E-68-87
Aliquot Collection Adapter for HPLC Automatic Injector Enabling Simultaneous Sample Analysis and Sample Collection

SN 6-635,610
Isolation of p24 Core Protein of HTLV-III, Serological Detection of Antibodies to HTLV-III in Sera of Patients with AIDS and Pre-AIDS Conditions, and Detection of HTLV-

III Infection by Immunoassays Using Purified p24.
SN 7-110,305
Synthetic Peptides for the Production of Specific Keratin Proteins

**Department of the Air Force**

SN 6-879,717 (4,745,608)
Laser Photography Pulse Synchronization Circuit
SN 6-893,436
Technique for Drug and Chemical Delivery
SN 7-059,641
Oxygen System Analyzer
SN 7-103,137
Magnesium Alloys and Articles
SN 7-110,903
Compact Device for Continuous Removal of Water from an Airstream-Cascade Impactor
SN 7-145,155
High Speed CDS Extraction System
SN 7-159,868
Band Clamp Apparatus
SN 7-160,693
Formation of Thin-Film Resistors on Silicon Substrates
SN 7-170,172
Silicon Light-Emitting Diodes with Integral Optical Waveguide

**Department of the Army**

SN 6-484,104 (4,744,299)
Impermeable Liner-Barrier for Propellants Containing a High Content of Carborane Burning Rate Accelerator
SN 7-167,653
Superconductive Levitated Armatures for Electromagnetic Launchers
SN 7-181,604
Improved Magnesium/Manganese Dioxide Electrochemical Cell.

[FR Doc. 88-16165 Filed 7-18-88; 8:45 am]
BILLING CODE 3510-04-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Request for Bilateral Textile Consultations With the Government of the Dominican Republic

July 14, 1988.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**AUTHORITY:** Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Article 3 of the Arrangement Regarding International Trade in Textiles.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

**SUPPLEMENTARY INFORMATION:** On June 30, 1988, the Government of the United States requested consultations with the Government of the Dominican Republic regarding men's and boys' suit-type coats in Category 633, produced or manufactured in the Dominican Republic.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Dominican Republic, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of man-made fiber textile products in Category 633, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on June 30, 1988 and extends through June 29, 1989, at a level of 54,869 dozen.

A summary market statement concerning this category follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of this category, or to comment on domestic production or availability of products included in Category 633, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The United States remains committed to finding a solution concerning Category 633. Should such a solution be reached in consultations with the Government of the Dominican Republic, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987).

**James H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Dominican Republic—Market Statement**

*Men's and Boys' Man-Made Fiber—Suit-type Coats (Category 633)*

June 1988.

*Summary and Conclusions*

U.S. imports of men's and boys' man-made fiber suit-type coats (Category 633) from the Dominican Republic reached 54,869 dozen during the year ending March 1988, 21 percent above the 45,448 dozen imported a year earlier. Men's and boys' man-made fiber suit-type coat imports from the Dominican Republic were 52,740 dozen in 1987 and 43,647 dozen in 1986. During the first three months of 1988, imports of men's and boys' man-made fiber suit-type coats (Category 633) from the Dominican Republic reached 12,938, a 20 percent increase above the 10,809 dozen imported during the same period of 1987.

The U.S. market for men's and boys' man-made fiber suit-type coats (Category 633) has been disrupted by imports. The sharp and substantial increase in imports from the Dominican Republic is contributing to this disruption.

*U.S. Production and Market Share*

U.S. production of men's and boys' man-made fiber suit-type coats has been on the decline, dropping from 1,189 thousand dozen in 1983 to 951 thousand dozen in 1985, a decline of 20 percent. Production in 1986 recovered slightly, reaching 1,006 thousand dozen, but fell again in 1987 to a level of 907 thousand dozen, 10 percent below the 1986 level and 24 percent below the 1983 level. The domestic manufacturers' share of the market fell from 87 percent in 1983 to 71 percent in 1987, a drop of 16 percentage points.

*U.S. Imports and Import Penetration*

U.S. imports of men's and boys' man-made fiber suit-type coats (Category 633) more than doubled between 1983 and 1987, increasing from 175 thousand dozen in 1983 to 364 thousand dozen in 1987. During the first three months of 1988, imports of men's and boys' man-made fiber suit-type coats (Category 633) reached 103 thousand dozen, nine percent above the level imported during the same period of 1987. The ratio of imports to domestic production nearly tripled, increasing from 15 percent in 1983 to 40 percent in 1987.

*Duty-Paid Value and U.S. Producers' Price*

All of Category 633 imports from the Dominican Republic during the first three

months of 1988 entered under TSUSA number 381.9510—men's man-made fiber woven suit-type coats and jackets, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 88-16178 Filed 7-18-88; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Federal Acquisition Regulation Supplement; Supplement No. 6, DoD Spare Parts Breakout Program

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of intent to revise DoD FAR Supplement No. 6.

**SUMMARY:** The Department of Defense proposes to issue a revised DoD FAR Supplement No. 6, DoD Spare Parts Breakout Program. This revised Supplement will expand Acquisition Method Codes (AMCs) and Acquisition Method Suffix Codes (AMSCs); validate AMC/AMSC combinations; remove the threshold for breakout screening; expand breakout screening to certain provisioning situations; add and clarify some definitions; and revise reporting procedures. (Comments are solicited.)

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 87-133 in all correspondence related to this subject.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. P. Thomas, Program Manager for Breakout, OASD(P&L)/L(SD), (202) 695-8360.

**SUPPLEMENTARY INFORMATION:**

### A. Background

DoD FAR Supplement No. 6 is revised to: Expand Acquisition Method Codes (AMCs) and Acquisition Method Suffix Codes (AMSCs); validate AMC/AMSC combinations; remove the threshold for breakout screening; expand breakout screening to certain provisioning situations; add and clarify some definitions; and revise reporting procedures. The revisions respond to recommendations of GAO Report NSIAD-87-16BR and also comply with requirements of the Competition in Contracting Act (CICA) of 1984.

Prior to the inception of the Federal Acquisition Regulation (FAR) and the DoD Supplement to the FAR (DFARS), the Defense Acquisition Regulation (DAR) included six separate supplements as follows:

DAR Supplement No. 1—Contractor Purchasing System Review (CPSR) Program (DARS No. 1) (31 MAR 82)

ASPR (DAR) Supplement No. 2—Contract File Maintenance, Closeout, and Disposition (ASPS No. 2) (1 APR 70)

ASPR (DAR) Supplement No. 3—Property Administration (ASPS No. 3) (1 OCT 75)

ASPR (DAR) Supplement No. 4—Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists (ASPS No. 4) (1 APR 68)

ASPR (DAR) Supplement No. 5—Procurement of Utility Services (ASPS NO. 5) (1 OCT 74)

DAR Supplement No. 6—DoD Replenishment Parts Breakout Program (DARS NO. 6) (1 JUN 83)

Note: ASPR (DAR) Supplement No. 2 was canceled by DAC #86-7, 2 NOVEMBER 1987.

The DAR Council will take action to either cancel or revise Supplements Nos. 1, 3, 4, and 5 at a later date.

This document contains the proposed revised Supplement No. 6 which will be published after public comments are considered.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

## DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

[Supplement No. 6; DFARSS No. 6]

### DOD Spare Parts Breakout Program

December 1987.

### DOD Federal Acquisition Regulation Supplement

[Supplement No. 6; DFARSS No. 6]

### DOD Spare Parts Breakout Program

*Foreword*

Supplement No. 6 to the DoD FAR Supplement entitled "DoD Spare Parts Breakout Program," is issued by direction of the Under Secretary of Defense for Acquisition (USD/A) pursuant to the authority contained in Department of Defense Directive No. 5000.35 dated March 8, 1978, and in Title 10, United States Code 2202.

This supplement is issued pursuant to DFARS 1.301 for the guidance of Department of Defense personnel engaged in acquisition (including technical support thereto) of centrally managed spare parts for military systems and equipment. It prescribes uniform policy, procedures and report formats for the DoD Spare Parts Breakout Program.

Copies of the DFARS Supplement No. 6 may be obtained by purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

## SUPPLEMENT 6—DOD SPARE PARTS BREAKOUT PROGRAM

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**Part 1—General**

*Paragraph*

## DOD SPARE PARTS BREAKOUT PROGRAM

### Part 1—General

S6-100 *Scope.* This Supplement establishes the DoD Spare Parts Breakout Program and provides uniform policies and procedures for management and conduct of the program within and between the Military Departments and the Defense Agencies.

S6-101 *Applicability.*

(a) Except as provided in (b) below, this Supplement applies to:

(1) any centrally managed replenishment or provisioned part (hereinafter referred to as "part") for military systems and equipment, and

(2) all DoD personnel involved with design control, acquisition and management of such parts including, but not limited to, project/program/system managers, technical personnel, contracting officers, legal counsel, inventory managers, inspectors, and small business utilization specialists and technical advisors.

(b) This Supplement does not apply to:

(1) component breakout (see DFARS 17.7202)

(2) foreign military sales (FMS) peculiar items

(3) insurance items (e.g. one-time buy)

(4) obsolete items

(5) phase out items (e.g. life of type buy)

(6) items with annual buy values below the thresholds developed by DoD Components or field activities

(7) parts being acquired under other specifically defined initial support programs, or

(8) parts acquired through local purchase.

S6-102 *General.*

(a) Significant resources are dedicated to the acquisition and management of parts for military systems and equipment. Adequate consideration shall be given to decisions made early in a weapon system acquisition related to the ability to competitively buy spares. Initially, repairable or consumable parts are identified and acquired through a provisioning process; repairable or consumable parts acquired thereafter are for replenishment. The objective of the DoD Spare Parts Breakout Program is to reduce costs through the use of competitive procurement methods, or the purchase of parts directly from the actual manufacturer rather than the prime contractor, while maintaining the integrity of the systems and equipment in which the parts are to be used. The program is based on the application of sound management and engineering judgment in (i) determining the feasibility of acquiring parts by competitive procedures or direct purchase from actual manufacturers and (ii) overcoming or removing constraints to breakout identified through the screening process (technical review described in S6-302.

(b) This Supplement sets forth procedures to screen and code parts in order to provide contracting officers (i) summary information regarding technical data and (ii) sources of supply to meet the Government's minimum requirements. This information assists the contracting officer to select the method of contracting, identify sources of supply, and make other decisions in the preaward and award phases, with consideration for established parameters of system and equipment integrity, readiness, and the opportunities to competitively acquire parts (see FAR/DFARS Part 6). The identification of sources for parts, for example, requires knowledge of manufacturing sources, additional operation performed after manufacturer of parts possessing safety or other critical characteristics, and the availability of technical data.

(c) The result of the screening process (technical review) is indicated by an Acquisition Method Code (AMC) and an Acquisition Method Suffix Code (AMSC). This program provides procedures for both the initial assignment of an AMC and an AMSC to a part, and for the recurring review of these codes (see S6-202 and S6-203(b)(1)).

S6-103 *Definitions.* For purposes of this Supplement, the following definitions apply.

S6-103.1 *Acquisition Method Code (AMC).* A single digit numeric code, assigned by a DoD activity, to describe to the contracting officer and other Government personnel the results of a technical review of a part and its suitability for breakout.

S6-103.2 *Acquisition Method Code Conference.* A conference which is generally held at the contractor's facility for the purpose of reviewing contractor technical information codes (CTICs) and corresponding substantiating date for breakout.

S6-103.3 *Acquisition Method Suffix Code (AMSC).* A single digit alpha code, assigned by a DoD activity, which provides the contracting officer and other Government personnel with engineering, manufacturing and technical information.

S6-103.4 *Actual Manufacturer.* An individual, activity, or organization that performs the physical fabrication processess that produce the deliverable part or other items of supply for the Government. The actual manufacturer must produce the part in-house. The actual manufacturer may or may not be the design control activity. (See definition for design control activity.)

S6–103.5 *Altered Item Drawing.* See current version of DoD–STD–100, paragraphs 201.4.4 and 703.

S6–103.6 *Annual Buy Quantity.* The forecast quantity of a part required for the next 12 months.

S6–103.7 *Annual Buy Value (ABV).* The annual buy quantity (S6–103.6) of a part multiplied by its unit price.

S6–103.8 *Bailment.* The process whereby a part is loaned to a recipient with the agreement that the part will be returned at an appointed time. The Government retains legal title to such material even though the borrowing organization has possession during the stated period.

S6–103.9 *Breakout.* The improvement of the acquisition status of a part resulting from a technical review and a deliberate management decision. Examples are:

(a) the competitive acquisition of a part previously purchased noncompetitively, and

(b) the direct purchase of a part previously purchased from a prime contractor who is not the actual manufacturer of the part.

S6–103.10 *Competition.* A contract action where two or more responsible sources, acting independently, can be solicited to satisfy the Government's requirement. (See definitions for limited competition and full and open competition.)

S6–103.11 *Contractor Technical Information Code (CTIC).* A two digit alpha code assigned to a part by a prime contractor to furnish specific information regarding the engineering, manufacturing, and technical aspects of that part.

S6–103.12 *Design Control Activity.* A contractor or Government activity having responsibility for the design of a given part, and for the preparation and currency of engineering drawings and other technical data for that part. The design control activity may or may not be the actual manufacturer. The design control activity is synonymous with design activity as used by DoD–STD–100. (See definition for actual manufacturer.)

S6–103.13 *Director Purchase.* The acquisition of a part from the actual manufacturer, including a prime contractor who is an actual manufacturer of the part.

S6–103.14 *Engineering Drawings.* See current versions of DoD–STD–100 and DoD–D–1000.

S6–103.15 *Extended Dollar Value.* The contract unit price of a part multiplied by the quantity purchased.

S6–103.16 *Full and Open Competition.* A contract action where all responsible sources are permitted to compete. (See definitions for competition and limited competition.)

S6–103.17 *Full Screening.* A detailed parts breakout process, including data collection, data evaluation, data completion, technical evaluation, economic evaluation, and supply feedback, used to determine if parts can be purchased directly from the actual manufacturer(s) of can be competed.

S6–103.18 *Immediate (Live) Buy.* A buy which must be executed as soon as possible to prevent unacceptable equipment readiness reduction, unacceptable disruption in operational capability, and increased safety risks, or to avoid other costs.

S6–103.19 *Life Cycle Buy Value.* The total dollar value of all procurements that are estimated to occur over a part's remaining life cycle.

S6–103.20 *Limited Competition.* A competitive contract action where the provisions of full and open competition do not exist. (See definitions for competition and full and open competition.)

S6–103.21 *Limited Screening.* A parts breakout process covering only selected points of data and technical evaluations, and should only be used to support immediate buy requirements (see S6–301.3).

S6–103.22 *Manufacture.* The physical fabrication process that produces a part, or other item of supply. The physical fabrication processes include, but are *not* limited to machining, welding, soldering, brazing, heat treating, braking, riveting, pressing, chemical treatment, etc.

S6–103.23 *Prime Contractor.* A contractor having responsibility for design control and/or delivery of a system/equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronics systems, and test equipment.

S6–103.24 *Provisioning.* The process of determining and acquiring the range and quantity (depth) of spare and repair parts, and support and test equipment required to operate and maintain an end item of materiel for an initial period of service.

S6–103.25 *Qualification.* Any action (contractual or precontractual) that results in approval for a firm to supply items to the Government without further testing beyond quality assurance demonstrations incident to acceptance of an item. When prequalification is required, the Government must have a justification on file: (1) stating the need for qualification and why it must be done prior to award, (2) estimating likely cost of qualification, and (3) specifying all qualification requirements.

S6–103.26 *Replenishment Part.* A part, repairable or consumable, purchased after provisions of that part, for: replacement; replenishment of stock; or use of the maintenance, overhaul, and repair of equipment such as aircraft, engines, ships, tanks, vehicles, guns and missiles, ground communications and electronic systems, ground support, and test equipment. As used in this Supplement, except when distinction is necessary, the term "part" includes subassemblies, components, and subsystems as defined by the current version of MIL–STD–280.

S6–103.27 *Reverse Engineering.* A process by which parts are examined and analyzed to determine how they were manufactured, for the purpose of developing a complete technical data package. The normal, expected result of reverse engineering is the creation of level 3 engineering drawings (see the current version of DoD–STD–100) suitable for manufacture of an item by new sources.

S6–103.28 *Selected Item Drawing.* See current version of DoD–STD–100, paragraph 201.4.5.

S6–103.29 *Source.* Any commercial or noncommercial organization which can supply a specified part. For coding purposes, sources include actual manufacturers, prime contractors, vendors, dealers, surplus dealers, distributors, and other firms.

S6–103.30 *Source Approval.* The Government review that must be completed prior to a contract award.

S6–103.31 *Source Control Drawing.* See the current version of DoD–STD–100, paragraph 201.4.3.

S6–103.32 *Technical Data.* Specifications, plans, drawings, standards, purchase descriptions, and such other data to describe the Government's requirements for acquisition. For a more detailed definition, see DFARS 27.401.

S6–104 *General Policies.*

(a) The identification, selection, and screening of parts for breakout shall be made as early as possible to determine the technical and economic considerations of the opportunties for breakout to competition or direct purchase. Full and open competition is the preferred result of breakout screening.

(b) A part shall be made a candidate for breakout screening based on its cost effectiveness for breakout. Resources should be assigned and priority given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and

performance stability. Consideration of all such factors is necessary to ensure the maximum return on investment in a given breakout program. Occasionally an item will not meet strict economic considerations for breakout, but action may be required due to other considerations to avoid overpricing situations. Accordingly, no minimum DoD threshold is hereby set for breakout screening actions. DoD Components and field activities will develop annual buy thresholds for breakout screening which are consistent with economic considerations and resources. Every effort should be made to complete the full screening of parts that are expected to be subsequently replenished as they enter the inventory.

(c) Breakout improvement efforts shall continue through the life cycle of a part to improve its breakout status (see S6-203) or until such time as the part is coded 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z or 2Z.

(d) No firm shall be denied the opportunity to demonstrate its ability to furnish a part which meets the Government's needs, without regard to a part's annual buy value, where a restrictive AMC/AMSC is assigned (see FAR 9.202). A firm must clearly demonstrate, normally at its own expense, that it can satisfy the Government's requirements. The Government shall make a vigorous effort to expedite its evaluation of such demonstration and to furnish a decision to the demonstrating firm within a reasonable period of time. If a resolution cannot be made within 60 days, the offeror must be advised of the status of the request and be provided with a good faith estimate of the date the evaluation will be completed. Every reasonable effort shall be made to complete the review before a subsequent procurement is made. Also, restrictive codes and low annual buy value do not preclude consideration of a surplus dealer or other nonmanufacturing source when the part offered was manufactured by an approved source (see FAR 10.010). A potential surplus dealer or other nonmanufacturing source must provide the Government with all the necessary evidence which proves the proposed part meets the Government's requirements.

(e) The experience and knowledge accrued by contractors in the development, design, manufacture and test of equipment may enhance the breakout decision-making process. DoD activities may obtain technical information from contractors when it is considered requisite to an informed coding decision. The procedure for contracting for this information is provided at Part 4. Contractor's technical information will be designated by CTICs. Only DoD activities shall assign AMCs and AMSCs.

(f) DoD activities with breakout screening responsibilities shall develop, document, and advertise programs which promote the development of qualified sources for parts that are currently being purchased sole source. These programs should provide fair and reasonable technical assistance (engineering or other technical data, parts on bailment, etc.) to contractors who prove they have potential for becoming a qualified second source for an item. These programs should also provide specially tailored incentives to successful firms so as to stimulate their investment in becoming qualified. For example, Government furnished equipment (GFE) or Government furnished material (GFM) for reverse engineering and technical data package review and assistance.

(g) DoD Components shall identify the engineering support activity, design control activity, actual manufacturer, and prime contractor for each part such that the information is readily available to breakout and acquisition personnel.

S6-105 *Responsibilities.*

(a) The Assistant Secretary of Defense for Production and Logistics, shall exercise authority for direction and management of the DoD Spare Parts Breakout Program, including the establishment and maintenance of implementing regulations.

(b) The Military Departments and Defense Agencies shall perform audits to ensure that their respective activities comply with the provisions of this program.

(c) Commanders of DoD activities with breakout screening responsibility shall:

(1) Implement a breakout program consistent with the requirements of this Supplement.

(2) Assist in the identification and acquisition of necessary data rights and technical data during system/equipment development and production to allow, when feasible, breakout of parts.

(3) Designate a program manager to serve as the central focal point, communicate breakout policy, ensure cost effectiveness of screening actions and breakout program, provide assistance in implementing breakout screening, monitor ongoing breakout efforts and achievements, and provide surveillance over implementation of this Supplement. The program manager shall report only to the Commander, or his deputy, of the activity with breakout screening responsibility.

(4) Ensure that actions to remove impediments to breakout are continued so long as it is cost effective, or until no further breakout improvements can be made.

(5) Invite the activity's Small and Small Disadvantaged Business Utilization (SADBU) Specialist and the resident Small Business Administration's Procurement Center Representative (PCR), if any, to participate in all acquisition method coding conferences at Government and contractor locations.

(6) Assure timely engineering and technical support to other breakout activities regardless of location.

i. In the case of parts where contracting or inventory management responsibility has been transferred, such support shall include:

(A) assignment of an AMC/AMSC prior to the transfer.

(B) assignment of an AMC/AMSC when requested by the receiving activity to parts transferred without such codes. The requesting activity may recommend an AMC/AMSC.

(C) full support of the receiving activities' breakout effort by providing timely engineering support in revising existing AMC/AMSCs.

ii. In all cases, such support shall include, but not be limited to, furnishing all necessary technical data and other information (such as code suspense date and procurement history) to permit acquisition in accordance with the assigned AMC/AMSC (see S6-105(d)(6)).

(7) Assure that appropriate surveillance is given to first time breakout parts.

(d) Breakout program managers shall be responsible for:

(1) Initiating the breakout process during the early phases of development and continue the process during the life of the part.

(2) Considering the need for Contractor Technical Information Codes (CTICs) and, when needed, initiating a contract data requirement.

(3) Identifying, selecting and screening in accordance with Part 3.

(4) Assigning an AMC/AMSC, using all available data, including CTICs.

(5) Responding promptly to a request for evaluation of additional sources or a review of assigned codes. An evaluation not completed prior to an immediate buy shall be promptly completed for future buys.

(6) Documenting all assignments and changes, to include rationale for assigning the chosen code, in a

permanent file for each part. As a minimum the file should identify the engineering support activity, cognizant design control activity, actual manufacturer, prime contractor, known sources of supply, and any other information needed to support AMC/AMSC assignments.

(e) Contracting officers responsible for the acquisition of replenishment parts shall:

(1) Consider the AMC/AMSC when developing the method of contracting, the list of sources to be solicited, the type of contract, etc.

(2) Provide information which is inconsistent with the assigned AMC/AMSC (e.g., availability of technical data or possible sources) to the activity responsible for code assignment with a request for timely evaluation of the additional information. An urgent immediate buy need not be delayed if an evaluation of the additional information cannot be completed in time to meet the required delivery date.

**Part 2—Breakout Coding**

§ 6–200 *Scope.* This part provides parts breakout codes and prescribes responsibilities for their assignment and management.

§ 6–201 *Coding.* Three types of codes are used in the breakout program.

§ 6–201.1 *Acquisition Method Codes.* The following codes shall be assigned by DoD activities to describe the results of the spare parts breakout screening:

(a) AMC 0. The part was not assigned AMC 1 through 5 when it entered the inventory, nor has it ever completed screening. Use of this code is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMC is the objective. This code will never be used to recode a part that already has AMC 1 through 5 assigned, and shall never be assigned as a result of breakout screening. Maximum effort to determine the applicability of AMC 1 through 5 is the objective.

(b) AMC 1. Suitable for competitive acquisition for the second or subsequent time.

(c) AMC 2. Suitable for competitive acquisition for the first time.

(d) AMC 3. Acquire, for the second or subsequent time, directly from the actual manufacturer.

(e) AMC 4. Acquire, for the first time, directly from the actual manufacturer.

(f) AMC 5. Acquire, directly from a sole source contractor which is not the actual manufacturer.

§ 6–201.2 *Acquisition Method Suffix Codes.* The following codes shall be assigned by DoD activities to further describe the Acquisition Method Code. Valid combinations of AMCs/AMSCs are indicated in each subparagraph below and summarized in Exhibit I.

(a) AMSC A. The Government's rights to use data in its possession is questionable. This code is only applicable to parts under immediate buy requirements and for as long thereafter as rights to data are still under review for resolution and appropriate coding. *This code is assigned only at the conclusion of limited screening,* and it remains assigned until the full screening process resolves the Government's rights to use data and results in assignment of a different AMSC. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, or if the data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(b) AMSC B. This part must be acquired from a manufacturing source(s) specified on a source control or selected item drawing as defined by the current version of DoD-STD–100. Suitable technical data, unlimited Government data rights, or manufacturing knowledge are not available to permit acquisition from other sources, nor qualification testing of another part, nor use of a second source part in the intended application. Although, by DoD–STD–100 definition, altered and selected items shall have an adequate technical data package, data review discloses that required data or data rights are not in Government possession and cannot be economically obtained. If one source is available, AMCs 3, 4 or 5 are valid. If a least two sources exist, AMCs 1 or 2 are valid.

(c) AMSC C. This part requires engineering source approval by the design control activity in order to maintain the quality of the part. Existing unique design capability, engineering skills, and manufacturing knowledge by the qualified source(s) require acquisition of the part from the approved source(s). The approved source(s) retain data rights, manufacturing knowledge, or technical data that are not economically available to the Government, and the data or knowledge is essential to maintaining the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity. The qualification procedures must be approved by the Government engineering activity having jurisdiction over the part in the intended application. If one source is approved, AMCs 3, 4 or 5 are valid. If at least two sources are approved or if data is adequate for an alternate source to qualify in accordance with the design control activity's procedures, AMCs 1 or 2 are valid.

(d) AMSC D. The data needed to procure this part competitively *is not physically available,* it cannot be obtained economically, nor is it possible to draft adequate specifications or any other adequate, economical description of the material for a competitive solicitation. AMCs 3, 4 or 5 are valid.

(e) AMSC E. (Reserved)

(f) AMSC F. (Reserved)

(g) AMSC G. The Government has unlimited rights to the technical data, the data package is complete, and there are no technical data, engineering, tooling or manufacturing restrictions. (This is the only AMSC that implies that parts are candidate for full and open competition. Other AMSCs such as K, M, N, Q, and S may imply limited competition when two or more independent sources exist yet the technical data package is inadequate for full and open competition.) AMCs 1 or 2 are valid.

(h) AMSC H. The Government physically does not have in its possession sufficient, accurate or legible data to purchase this part from other than the current source(s). This code is applicable only to parts under immediate buy requirements and only for as long thereafter as the deficiency is under review for resolution and appropriate recoding. *This code is only assigned at the conclusion of limited screening,* and it remains assigned until the full screening process resolves physical data questions and results in assignment of a different AMSC. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(i) AMSC I. (Not authorized)

(j) AMSC J. (Reserved)

(k) AMSC K. This part must be produced from class 1 castings and similar type forgings as approved (controlled) by procedures contained in the current version of MIL–STD–2175. If one source has such castings and cannot provide them to other sources, AMCs 3, 4 or 5 are valid. If at least two sources have such castings or they can be provided to other sources, AMCs 1 or 2 are valid.

(l) AMSC L. The annual buy value of this part falls below the screening threshold established by DoD Components and field activities. However, this part has been screened for additional known sources, resulting in either confirmation that the initial source exists or that other sources may supply the part. No additional screening

was performed to identify the competitive or noncompetitive conditions that would result in assignment of a different AMSC. This code shall not be used when screening parts entering the inventory. This code shall be used only to replace AMSC O for parts under the established screening threshold. If one source is available, AMCs 3, 4, or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(m) AMSC M. Manufacture of this part requires use of master or coordinated tooling. If only one set of tooling exists and cannot be made available to another source for manufacture of this part, AMCs 3, 4, or 5 are valid. When the availability of existent or refurbishable tooling is available to two or more sources, then AMCs 1 or 2 are valid.

(n) AMSC N. Manufacture of this part requires special test and/or inspection facilities to determine and maintain ultra-precision quality for its function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplished without such specialized test or inspection facilities. If the test cannot be made available for the competitive manufacture of the part, the required test or inspection knowledge cannot be documented for reliable replication, or the required physical test or inspection facilities and processes cannot be economically documented in a TDP, valid AMCs, are 3, 4 or 5. If the facilities or tests can be made available to two or more competitive sources, AMCs 1 or 2 are valid.

(o) AMSC O. The part was not assigned an AMSC when it entered the inventory, nor has it ever completed screening. Use of this code in conjunction with AMC O is sometimes necessary but discouraged. Maximum effort to determine the applicability of an alternate AMSC is the objective. Only AMC O is valid.

(p) AMSC P. The rights to use the data needed to purchase this part from additional source(s) is not owned by the Government and cannot be purchased, developed or otherwise obtained. It is uneconomical to reverse engineer this part. This code is used in situations where the Government has the data but does not own the rights to the data. If only one source has the rights or data to manufacture this item, AMCs 3, 4 or 5 are valid. If two or more sources have the rights or data to manufacture this time, AMCs 1 or 2 are valid.

(q) AMSC Q. The Government does not have adequate data, lacks rights to data, or both needed to purchase this part from additional sources. The Government has been unable to economically buy the data or rights to the data, although the part has been undergoing full screening for 12 or more months. Breakout to competition has not been achieved, but current, continuing actions to obtain necessary rights to data or adequate, reprocurement technical data indicate breakout to competition is expected to be achieved. This part may be a candidate for reverse engineering or other techniques to obtain technical data. No immediate buy of this part has occurred to initiate limited screening and assignment of AMSCs A or H. This code may be used to change from AMSC O or any other noncompetitive AMSC except A or H (which are only assigned after limited screening). All AMSC Q items are required to be reviewed within the timeframes cited in S6–203(b). If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(r) AMSC R. The Government *does not own* the data or the rights to the data needed to purchase this part from additional sources. It has been determined to be uneconomical to buy the data or rights to the data. It is uneconomical to reverse engineer the part. This code is used when the Government did not initially purchase the data and/or rights. If only one source has the rights or data to manufacture this item, AMCs 3, 4 or 5 are valid. If two or more sources have the rights or data to manufacture this item, AMCs 1 or 2 are valid.

(s) AMSC S. Acquisition of this item is restricted to Government approved source(s) because the production of this item involves unclassified but militarily sensitive technology (see FAR 6.3). If one source is approved, AMCs 3, 4 or 5 are valid. If at least two sources are approved, AMCs 1 or 2 are valid.

(t) AMSC T. Acquisition of this part is controlled by qualified products list (QPL) procedures. Competition for this part is limited to sources which are listed on or are qualified for listing on the QPL at the time of award. (See FAR Part 9 and DFARS Part 9.) AMCs 1 or 2 are valid.

(u) AMSC U. The cost to the Government to breakout this part and acquire it competitively has been determined to exceed the projected savings over the life span of the part. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(v) AMSC V. This part has been designed a high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

(w) AMSC W. (Reserved)

(x) AMSC X. (Not authorized)

(y) AMSC Y. The design of this part is unstable. Engineering, required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources exist, AMCs 1 or 2 are valid.

(z) AMSC Z. This part is a commercial/non-developmental/off-the-shelf-item. Commercial item descriptions, commercial vendor catalog or price lists or commercial manuals assigned a technical manual number apply. If one source is available, AMCs 3, 4 or 5 are valid. If at least two sources are available, AMCs 1 or 2 are valid.

S6–201.3 *Contractor Technical Information Codes.* The following two digit alpha codes shall be used by contractors, when contractor's assistance is requested. These codes are assigned in accordance with the current version of MIL–STD–789 and shall be considered during the initial assignment of an AMC/AMSC. For spare part breakout, requirements for contractor assistance through CTIC submission shall be accomplished as stated in Part 4 of this Supplement. Each CTIC submitted by a contractor must be accompanied by supporting documentation which justifies the proposed code. These codes and supporting documentation, transmitted by DD Forms 1418 and 1418–1 are useful not only for code assignment during acquisition coding conferences, but also for personnel conducting both full and limited screening of breakout candidates. Personnel conducting full and limited screening of breakout candidates should use the supporting documentation provided with CTICs as a source of information. However, they should not allow this information to substitute for careful analysis and further investigation of the possibilities of acquiring a part through competition or by direct purchase. The definitions for CTICs are listed below:

(a) CTIC CB Source(s) are specified on source control, altered item, or selected item drawings/documents. (The contractor shall furnish a list of the sources with this code.)

(b) CTIC CC. Requires engineering source approval by the design control activity in order to maintain the quality of the part. An alternate source must qualify in accordance with the design control activity's procedures, as approved by the cognizant Government engineering activity.

(c) CTIC CG. There are no technical restrictions to competition.

(d) CTIC CK. Produced from class 1 castings (see the current version of MIL-STD-2175) and similar type forgings. The process of developing and proving the accepability of high-integrity castings and forgings requires repetitive performance by a controlled source. Each casting or forging must be produced along identical lines to those which resulted in initial acceptabliity of the part. (The contractor shall furnish a list of known sources for obtaining castings/forgings with this code.)

(e) CTIC CM. Master or coordinated tooling is required to produce this part. This tooling is not owned by the Government or, where owned, cannot be made available to other sources. (The contractor shall furnish a list of the firms possessing the master or coordinated tooling with this code.)

(f) CTIC CN. Requires special and/or inspection facilities to determine and maintain ultra-precision quality for function or system integrity. Substantiation and inspection of the precision or quality cannot be accomplsihed without such specialized test or inspection facilities. Other sources in industry do not possess, nor would it be economically feasible for them to acquire facilities. (The contractor shall furnish a list of the required facilities and their locations with this code.)

(g) CTIC CP. The rights to use the data needed to purchase this part from additional sources are not owned by the Government and cannot be purchased.

(h) CTIC CV. A high reliability part under a formal reliability program. Probability of failure would be unacceptable from the standpoint of safety of personnel and/or equipment. The cognizant engineering activity has determined that data to define and control reliability limits cannot be obtained nor is it possible to draft adequate specifications for this purpose. Continued control by the existing source is necessary to ensure acceptable reliability. (The contractor shall identify the existing source with this code.)

(i) CTIC CY. The design of this part is unstable. Engineering, manufacturing or performance characteristics indicate that the required design objectives have not been achieved. Major changes are contemplated because the part has a low process yield or has demonstrated marginal performance during tests or service use. These changes will render the present part obsolete and unusable in its present configuration. Limited acquisition from the present source is anticipated pending configuration changes. (The contractor shall identify the existing source with this code.)

S6-202 *Assignment of Codes.* The purpose of AMC/AMSC assignments is to provide the best possible technical assessment of how a part can be procured. The technical assessment should not be based on issues such as: are the known sources actual manufacturers, or are there two actual manufacturers in existence; but rather on factors such as the availability of adequate technical data, the Government's rights to use the data, technical restrictions placed on the hardware (criticality, reliability, special testing, master tooling, source approval, ect.) and the cost of breakout vice projected savings. In cases where there is additional technical information which affects the way a part can be procured, it should be made available to the contracting officer, with the AMC/AMSC. Concerning the assignment of AMCs and AMSCs, it is DoD policy that:

(a) The assignment of AMC/AMSCs to parts is the responsibility of the DoD Component introducing the equipment or system for which the parts are needed in the inventory. Subsequent screening is the responsibility of the DoD Component assigned technical responsibility.

(b) When to or more AMSCs apply the most technically restrictive code will be assigned.

(c) Restricted combination of AMC/AMCS are reflected in the AMSC definitions (see S6-201.2). The Defense Logistics Service Center will reject invalid code combinations, as shown in Exhibit I, submitted for entry into the Federal Catalog Program (see S6-204.2).

(d) One-time acquisition of a part by a method other than indicated by the code does not require a change to the AMC (e.g., when only one of a number of sources can meet a short delivery date, or when only one manufacturing source is known but acceptable surplus parts are available from other sources).

(e) After the first acquisition pursuant to AMC 2 or 4, the AMC shall be recoded 1 or 3 respectively.

(f) Both full and limited screening will result in the assignment or reassignment of an AMC/AMCS. This assignment shall be based on the best technical judgment of breakout personnel and on information gathered during the screening process.

(g) A part need not be coded as noncompetitive based on an initial market survey which only uncovers one interested source. If the Government has sufficient technical data in its possession to enable other sources to manufacture an acceptable part, and there are no technical restrictions on the part which would preclude other sources from manufacturing it, the part should be coded competitive.

S6-203 *Improving Part Status.*

(a) General. An effective breakout program requires that all reasonable actions be taken to improve the acquisition status of parts. The potential for improvement of the acquisition status will vary with individual circumstances. On one end of the spectrum are those parts with acquisition method suffix codes of a temporary nature requiring vigorous follow-through improvement action (e.g., AMSCs A and H); on the other end are those parts with codes suggesting a relative degree of permanence (e.g., AMSC P). A code assigned to a part should never be considered fixed with respect to either technical circumstance or time; today's technical constraint may be overcome by tommorrow's technology and a contractor's rights to data, so zealously protected today, often become less important with time. The application of breakout improvement effort must always consider individual circumstances and overall benefits expected to be obtained.

(b) Code Suspense Dates. Every part whose breakout status can be improved shall be suspensed for rescreening as appropriate. In general, the following codes cannot be improved: 1G, 2G, 1K, 2K, 1M, 2M, 1N, 2N, 1T, 2T, 1Z or 2Z. The period between suspenses is a period for which the assigned AMC/AMSC is considered active, and routine rescreening of parts with "valid" codes is not required. Suspense dates may vary with the circumstance surrounding each part. A code reached as a result of limited screening (S6-304) shall not be assigned a suspense date exceeding 12 months; a code reached as a result of full screening (S6-303) shall not be assigned a suspense date exceeding three years. In exceptional cases, where circumstances indicate that no change can be expected in a code over an extended period, a suspense date not exceeding five years may be assigned in accordance with controls established by

the breakout activity. Items with a 1G or 2G code do not require a suspense date.

S6-204 *Communication of Codes.*

S6-204.1 *Communication Media.* The Federal Catalog Program formats, set forth in DoD Manual 4100.39-M, "Defense Integrated Data System (DIDS) Procedural Manual," communication media and operating instructions as augmented by this Supplement shall be employed to disseminate AMCs and AMSCs.

S6-204.2 *Responsibilities.*

(a) The Defense Logistics Service Center (DLSC) shall:

(1) Receive and disseminate AMCs and AMSCs for each National Stock Number (NSN) to all appropriate Government activities in consonance with scheduled Federal Catalog Program computer cycles.

(2) Make the AMCs and AMSCs a part of the data bank of NSN item intelligence.

(3) Perpetuate the codes in all subsequent Federal Catalog Program transactions; e.g., entry of new NSNs and Federal Supply Code (FSC) changes.

(4) Reject invalid code combinations submitted for entry into the Federal Catalog Program.

(b) DoD activities responsible for the assignment of AMCs and AMSCs shall:

(1) Transmit assigned codes for each NSN through normal cataloging channels to DLSC under existing Federal Catalog Program procedures.

(2) Notify DLSC by normal Federal Catalog Program maintenance procedures when a change in coding is made.

**Part 3—Identification, Selection, and Screening of Parts**

S6-300 *General.* This part sets forth procedures for the identification, selection and screening of parts.

S6-301 *Identification and Selection Procedures.*

S6-301.1 *Parts Entering the Inventory.* The breakout process should begin at the earliest possible stage of weapon systems acquisition. Generally, a provisioned part will require subsequent replenishment. Provisioning or similar lists of new parts are, therefore, the appropriate bases for selecting parts for screening. This is not to imply that breakout must be done on all items as part of the provisioning process. Priorities shall be applied to those parts offering the greatest opportunity for breakout and potential savings. The major factors in making this determination are: (1) the unit price, (2) the projected quantity to be purchased over the part's life cycle, and (3) the potential for screening to result in a part being successfully broken out, e.g. item stability, cost and completeness of technical data, etc.

S6-301.2 *Annual Buy Forecasts.* Annually, lists shall be prepared that identify all parts projected for purchase during the subsequent 12-month period. Priority should be given to those parts with the greatest expected return given their annual buy value, life cycle buy value, and likelihood of successful breakout, given technical characteristics such as design and performance stability and the availability of technical data. Parts with an expired suspense date or a suspense date which will expire during the forecast period (see S6-203(b)), need only be subjected to the necessary steps of the full screening procedure (see S6-303). Parts with a valid code that will not expire during the forecast period need not be screened. Parts coded 0o shall be selected for full screening.

S6-301.3 *Immediate Buy Requirements.* An immediate buy requirement will be identified by the user or the item manager in consonance with DoD Component regulations. When an immediate buy requirement meeting the screening criteria (see S6-104(b)) is generated for a part not assigned a current AMC/AMSC, the part shall be promptly screened in accordance with either the full or limited screening procedures (see S6-303 and S6-304).

S6.301.4 *Suspect AMC/AMSC.* Whenever AMC/AMSC is suspected to be inaccurate, even by the contracting officer, a rescreening shall be conducted for that part. Suspect codes include codes composed of invalid combinations of AMCs and AMSCs, those which do not truely reflect how a part is actually being procured, and those suspected of being more restrictive than necessary for the next buy.

S6-302 *Screening.*

(a) Screening procedures include consideration and recording of the relevant facts pertaining to breakout decisions. The objective of screening is to improve the acquisition status by determining the potential for competition, or purchase from an actual manufacturer. Consideration of any reasonable approach to establishing competition should be an integral part of the breakout process.

(b) Screening procedures may vary depending on circumstances related to the parts. No set rules will provide complete guidance for making acquisition method decisions under all conditions encountered in actual practice. An informed coding decision can be made without following the procedures step by step in every case.

(c) Activities involved in screening are encouraged to develop supplemental procedures which prove effective in meeting this regulation's objectives. These procedures should be tailored to the particular activity's operating environment and the characteristics of the parts for which it is responsible. Nevertheless, care should be taken in all cases to assure that:

(1) Responsible judgment is applied to all elements involved in the review of a part;

(2) The necessary supporting facts are produced, considered and recorded in the breakout screening file. The breakout screening file contains technical data and other documents concerning screening of the part;

(3) All cost effective alternatives are considered for establishing competition, or purchase from an actual manufacturer (see S6-105d(6));

(4) When possible, the sequence of the review allows for accomplishing several screening steps concurrently.

(d) Contractor participation in the decision-making process extends only to providing technical information. This technical information is provided via the supporting documentation (DD Forms 1418 and 1418-1) which includes the CTIC assignment. Government personnel shall substantiate the breakout decision by reference to the CTIC and by careful review of the supporting documentation. However, the CTIC provides guidance only, and it should be used as one of the inputs to arrive at an acceptable AMC and AMSC coding.

(e) Contractor's technical information furnished in accordance with MIL-STD-789 may indicate areas requiring additional research by the Government before screening can be completed. Seldom will industry's contribution to the screening process enable the Government to assign an AMC or an AMSC without additional review.

(f) During the screening process, it may be appropriate to communication with industry, particularly potential manufacturers of a part, to determine the feasibility of establishing a competitive source and to estimate the costs and technical risks involved.

(g) Coding conference with industry shall be documented.

(h) Screening may disclose a part is not suitable for competitive acquisition, but it may be possible to breakout the part for direct purchase from the actual manufacturer or to establish a second source. Parts particularly suited to direct purchase are those where neither the design control activity nor the prime contractor contribute additional value or

whose data belong to the actual manufacturer and will not be acquired by the Government, and where that manufacturer exercises total responsibility for the part (design and quality control, testing, etc.), and where additional operations performed by the prime contractor can be performed by the actual manufacturer or by the Government.

(i) For each part that is screened, a file shall be established to document and justify the decisions and results of all screening effort. (See S6-105(d)(6).)

(j) Full and limited screening procedures are two elements of breakout programs. Other spare parts initiatives to enhance breakout are reverse engineering, bailment, data rights challenges and publication of intended buy lists. Integration of other initiatives within the screening processes developed at each activity is encouraged.

S6-303 *Full Screening Procedures.*

(a) Full screening procedures should be developed so that the potential is fully evaluated for establishing competition or purchase from an actual manufacturer. Also, full screening procedures should facilitate accurate and consistent acquisition method code assignment. It is expected that each activity will develop its own operational screening procedures. A general model, full screening decision process is provided below to support the development of activity level procedures and to provide guidance regarding the general scope of these procedures. The full screening procedures involve 65 steps in the decision process, and are divided into the following phases:

(1) Data Collection;
(2) Data Evaluation;
(3) Data Completion;
(4) Technical Evaluation;
(5) Economic Evaluation; and
(6) Supply Feedback.

(b) The six phases listed above describe different functions that must be achieved during screening. The nature of the screening process does not permit clear distinction of one phase from another. Further, the order of performance of these phases may not correspond to the order listed here. In fact, these phases will often overlap and may be performed simultaneously. Their purpose is to identify the different functions comprising the screening process.

(c) A summary flow chart of the decision steps is provided as Exhibit II to assist in understanding the logical order of the full screening steps for various conditions. Use of the flow chart in connection with the text that follows is essential to fully understand the order of the steps in the process.

S6-303.1 *Data Collection Phase (Step 1).*

(a) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part, including:

(1) Normal identification required for cataloging and standardization review.

(2) All known sources.

(3) Historical contracting information, including the more recent awards, and unit price(s) for the quantities prescribed.

(4) Identification of the actual manufacturer(s), his latest unit price and the quantity on which the price is based. (When the actual manufacturer is not the design control activity, the design control activity may be consulted to ensure the latest version of the item is being procured from the actual manufacturer.)

(5) Identification of the activity, Government or industry, having design control over the part and, if industry, the cognizant Government engineering activity.

(6) The expected life in the military supply system.

(7) Record of any prior review for breakout, with results or findings.

(8) Annual demand.

(b) In the case of complex items requiring large numbers of drawings, collection of a reasonable technical data sample is sufficient for the initial technical data evaluation phase (Steps 2-14).

S6-303.2 *Data Evaluation Phase (Steps 2-14).*

(a) Data evaluation is crucial to the whole review procedure. It involves determination of the adequacy of the technical data package and the Government's rights to use the data for acquisition purposes.

(b) The data evaluation process may be divided into two stages:

(1) A brief but intensive analysis of available data and documents regarding both technical matters and data rights, leading to a decision whether to proceed with screening; and

(2) If the decision is to proceed with screening, further work is necessary to produce an adequate technical data package, such as research of contract provisions, engineering work on data and drawings, and requests to contractors for additional data.

(c) The steps in this phase are:

(1) *Step 2.* Are full Government rights established by the available data package? Evidence for an affirmative answer would include the identification of Government drawings, incorporation by reference of Government specifications or process descriptions in the public domain, or reference to contract provisions giving the Government unlimited rights to data. If the answer is negative, proceed to Step 3; if positive, proceed to Step 6.

(2) *Step 3.* Are the contractor's limitations on use of rights to data established by the available data package?

A. The questions above (Steps 2 and 3) are not exclusive. The incorporation in a drawing of contract provisions reserving rights to the manufacturer, either in the whole design or in certain manufacturing processes, would establish a clear affirmative answer to Step 3 where there is substantiating Government documentation. Parts not in this group shall be retained for further processing (see Step 20). Data rights that cannot be substantiated shall be challenged.

B. In the case of clear contractor ownership of rights, proceed with Steps 4 and 5.

(3) *Step 4.* Are there bases for competitive acquisition without using data subject to limitations on use? This question requires consideration, for example, of the possibility of using performance specifications or substitution of military or commercial specifications or bulletins for limited elements of the manufacturing process. The use of sample copies is another possibility.

(4) *Step 5.* Can the Government buy the necessary rights to data? This is a preliminary question to the full analysis (in Steps 20 and 21 below) and is designed primarily to eliminate from further consideration those items which incorporate established data restrictions and for which there are no other bases for competitive acquisition nor is purchase of rights possible or feasible.

(5) *Steps 6 and 7.* Is the present technical data package adequate for competitive acquisition of a reliable part? *Steps 8 and 9.* Specify omissions. This question requires a critical engineering evaluation and should deal first with the physical completeness of the data—are any essential dimensions, tolerances, processes, finishes, material specifications, or other vital elements of data lacking from the package? If so, these omissions should be specified. A second element deals with adequacy of the existing package to produce a part of the required performance, compatibility, quality and reliability. This will, of course, be related to the completeness of data. In some cases, qualified engineering judgment may decide that in

spite of apparently complete data, the high performance or other critical characteristics of the item require retention of the present source. If such decision is made, the file shall include documentation in the form of specific information, such as difficulties experienced by the present manufacturer in producing a satisfactory item or the existence of unique production skills in the present source.

(6) *Steps 10 and 11.* Can the data be developed to make up a reliable technical data package? This implies a survey of the specified omissions with careful consideration to determine the resources available to supply each missing element. Such resources will vary from simple referencing of standard engineering publications to more complex development of drawings with the alternatives of either obtaining such drawings or developing performance specifications. In some cases, certain elements of data are missing because they have been properly restricted. If, however, there has been no advance substantiation of the right to restrict, the part should be further researched. If the answer to this question is negative, proceed to Step 12; if positive, proceed to Steps 13 or 14.

(7) *Step 12.* If the answer to the question in Steps 10 and 11 is no, which condition is the prime element in this decision, the lack of data or the unreliability of the data? Specific documentation is needed to support this decision.

(8) *Steps 13 and 14.* Estimate the time required to complete the data package. In those cases where the data package is found inadequate and specific additions need to be developed, an estimate of the time required for completion must be made in order to determine if breakout of the part is feasible during this review cycle and to estimate at what point in the remaining life of the part the data package could be available.

S6–303.3 *Data Completion Phase (Steps 15–21).*

(a) The data completion phase involves acquiring or developing the missing elements of information to reach a determination on both adequacy of the technical data package and the restriction of rights to data. It may involve various functional responsibilities, such as examination of past contracts, queries directed to industry or to other Government Agencies, inspection of the part, reverse or other engineering work to develop drawings and write specifications, arrangements with the present source for licensing or technical assistance to new manufacturers, and negotiations for purchase of rights to data. Additional research and information requests should be expeditiously initiated on those parts where there is a reasonable expectation of breakout. Because this phase is time-consuming, it should take place concurrently with other phases of the review.

(b) At the beginning of the data completion phase, the part falls into one of four steps as follows:

(1) *Step 15.* The data package is complete and adequate and the Government has full rights to use it for acquisition purposes. Such parts require no further data analysis. Proceed to Step 22.

(2) *Step 16.* The Government has full rights to use existing data. The data package is incomplete but there is a reasonable expectation that the missing elements can be supplied. Proceed to Step 19.

(3) *Step 17.* The data package is complete, but full Government rights to the data have not been established. Proceed to Step 20.

(4) *Step 18.* Neither rights nor completeness of data is adequately established; therefore, the part requires further research. Proceed to Step 20.

(c) *Step 19.* Obtain or develop the necessary data for a reliable data package. Reverse engineering to develop acquisition data may be employed (see DFARS 27.403–2) if there is a clear indication that the costs of reverse engineering will be less than the savings anticipated from competitive acquisition. If there is a choice between reverse engineering and the purchase of data (Step 21), the decision shall be made on the basis of relative costs, quality, time, and other pertinent factors.

(d) *Step 20.* Establish the Government's and the contractor's rights to the data. Where drawings and data cannot be identified to a contract, the following guidelines should be applied:

(1) Where drawings and data bear legends which warn of copyright or patent rights, the effect of such legends shall be resolved according to law and policy; however, the existence of patent or copyright restrictions does not per se preclude securing competition with respect to the parts described (see FAR/DFARS 27.3).

(2) Where drawings and data bear legends which state limitations on their use for reacquisition purposes, and it is determined that a question reasonably exists as to whether such limitations on use were properly affixed to the drawings or data, initiate action to challenge the contractor as to the reasons for limitations. Use of the drawings and data shall be in accordance with the decision.

(3) Where drawings and data are unmarked and therefore free of limitation on their use, they shall be considered available for use in acquisition, unless the acquiring office has clear evidence to the contrary (see DFARS 27.403–3(d)).

(4) The decision process in situations described in (1), (2), and (3) requires the exercise of sound discretion and judgment and embraces legal considerations. In no case shall a decision be made without review and approval of that decision by legal counsel.

(5) If analysis fails to establish that any of the drawings and data are properly restricted to the present source or manufacturer, the Government shall attempt to obtain competition pursuant to the decisions resulting from concurrent technical and economic evaluation.

(e) *Step 21.* If restrictions on the use of data are established, determine whether the Government can buy rights to the required data. The procedure in DFARS 27.403–2(f) for the purchase of unlimited rights to data shall be followed when it is planned to purchase data with unlimited right for competitive acquisition.

S6–303.4 *Technical Evaluation Phase (Steps 22–37).*

(a) Introduction.

(1) The purposes of technical evaluation are to determine the development status, design stability, high performance, and/or critical characteristics such as safety of personnel and equipment; the reliability and effective operation of the system and equipment in which the parts are to be used; and to exercise technical judgment as to the feasibility of breaking out the parts. No simple and universal rules apply to each determination, and the application of experience and responsible judgment is required. Technical considerations arise in several elements of the decision process, e.g., in determining adequacy of the data package (Steps 6–14).

(2) Certain manufacturing conditions may reduce the field of potential sources. However, these conditions do not justify the restriction of competition by the assignment of restrictive AMCs for the following reasons:

(i) Parts Produced From Class 1 Castings and Similar Type Forgings: The process of developing and proving the acceptability of high-integrity castings and forgings requires repetitive performance by a controlled source for each casting or forging along identical

lines to those which result in initial acceptability of the item. The particular manufacturer's process becomes the controlling factor with regard to the acceptability of any such item. However, other firms can produce class 1 castings and similar type forgings and provide the necessary inspection, or the part may be procured from other sources which use castings or forgings obtained from approved (controlled) source(s).

(ii) Parts Produced From Master or Coordinated Tooling, e.g., Numerically Controlled Tapes: Such parts have features (contoured surfaces, hole locations, etc.) delineated according to unique master tooling or tapes and are manufactured to min/max limits and must be replaceable without additional tailoring or fitting. These parts cannot be manufactured or configured by a secondary pattern or jigs independent of the master tooling and cannot be manufactured to requisite tolerances of fit by use of commercial precision machinery. In this context, jigs and fixtures used only for ease of production are not considered master tooling. However, master tooling may be reproduced.

(iii) Parts Requiring Special Test and/or Inspection Facilities to Determine and Maintain Ultra-Precision Quality for the Function or System Integrity: Substantiation and inspection of the precision or quality cannot be accomplished without specialized test or inspection facilities. Testing is often done by the actual manufacturer under actual operating use. However, such special test inspection facilities may be available at other firms.

(b) Design Procedures (Steps 22–31)

(1) *Step 22.* Will a design change occur during anticipated lead time? If affirmative, proceed to Step 23; if negative, proceed to Step 24. *Step 23.* Specify the design change and assign an appropriate code. *Step 24.* Is a satisfactory part now being produced? Concurrently with the research and completion of data, a technical determination is required as to the developmental status of the part. With the frequent telescoping of the development/production cycle as well as constant product improvement throughout the active life of equipment, parts are frequently subject to design changes. The present source, if a prime contractor, is usually committed to incorporate the latest changes in any deliveries under a production order. In considering the part for breakout, an assessment must be made of the stability of design, so that in buying from a new source the Government will not be purchasing an obsolete or incompatible part. The question of obsolescence or noncompatibility is to some extent under Government control. Screening for breakout on parts that are anticipated to undergo design change should be deferred until design stability is attained.

(2) *Step 25.* Can a satisfactory part be produced by a new source? Determine whether technical reasons prohibit seeking a new source. The fact that the present source has not yet been able to produce a satisfactory part (Step 24) does not preclude another source from being successful. If the answer to Steps 24 or 25 is affirmative, proceed simultaneously to Steps 27 and 38. If the answer to Step 25 is negative, proceed to Step 26.

(3) *Step 26.* If the present source is producing an unsatisfactory part, but technical reasons prohibit seeking a new source, specify the reasons.

(4) *Step 27.* Does the part require prior qualifications or other approval testing? If the answer is positive, proceed to Step 28; if negative, proceed to Step 32. *Step 28.* Specify the requirement. *Step 29.* Estimate the time required to qualify a new source. *Step 30.* Is there currently a qualified source? *Step 31.* Who is responsible for qualification—the subcontractor, present prime contractor, the Government, or an independent testing agency?

i. If a qualified source is currently in existence, the review should consider who will be responsible for qualification in the event of competitive acquisition. If qualification teting is such that it can be performed by the selected source under a preproduction or first article clause in the contract, the costs of initial approval should be reflected in the offers received. If the part requires initial qualification tests by some other agency such as the present prime contractor, the Government, an independent testing agent outside the Government, or by technical facilities within the Military Services, out-of-pocket costs may be incurred if the part is competed. An estimate of qualification costs should then be made and recorded in such cases.

ii. Where facilities within the Government are not adequate for testing or qualification, or outside agencies such as the equipment contractor cannot or will not do the job, the economics of qualification may be unreasonable, and a narrative statement of these facts should replace the cost estimate. Whenever possible, such as in the case of engine qualification tests, economy of combined qualification tests should be considered.

(c) Quality Assurance Procedures (Steps 32–33). Quality control and inspection is a primary consideration when making a decision to breakout. Where the prime contractor performs quality assurance functions beyond those of the part manufacturer or other sources, the Government may:

(1) develop the same quality control and inspection capability in the manufacturer's plant;

(2) assume the responsibility for quality; or

(3) undertake to obtain the quality assurance services from another source, possibly the prime contractor.

(4) *Step 32.* Who is now responsible for quality control and inspection of the part? *Step 33.* Can a new source be assigned responsibility for quality control? Is the level of the quality assurance requirements specified in the system contract necessary for the screened part? The minimum quality assurance procedures for each part shall be confirmed.

i. A new source shall be considered if:

(A) Any essential responsibility (e.g. burn-in, reliability, maintainability) retained by the prime contractor for the part and its relationship to the end item can be eliminated, shifted to the new source, or assumed by the Government; or

(B) the prime contractor will provide the needed quality assurance services; or

(C) the Government can obtain competent, impartial services to perform quality assurance responsibility; or

(D) the new source can maintain an adequate quality assurance program, inspection system, or inspection appropriate for the part.

ii. If the prime contractor has responsibility for quality that a new source cannot assume or obtain, or that the Government cannot undertake or eliminate, consideration of the new source is precluded.

(d) Tooling Procedures (Steps 34–37). *Step 34. Is tooling or other special equipment required? Step 35.* Specify the type of tooling. *Step 36.* Estimate additional acquisition lead time for setup and for tooling. *Step 37.* Does the Government possess this tooling? If tooling or special equipment is required for production of the part, the types and quantities should be specified. Investigation can then be made as to whether the Government possesses such tooling and can make it available to a new source. A requirement for special tooling is not necessarily a deterrent to competitive solicitation for parts. The Government may find it desirable to purchase the needed tooling and furnish it to the new source. In this case, the costs can be determined with reasonable accuracy. However, if new

sources can provide the tooling or special equipment, this will be reflected in competitive prices and should not normally require further analysis.

S6–303.5 *Economic Evaluation Phase (Steps 38–56).*

(a) Economic evaluation concerns identification and estimation of breakout savings and direct cost offsets to breakout. The economic evaluation phase is composed of the three segments detailed in (b) through (d) below.

(b) Development of Savings Data (Steps 38–40). *Step 38.* Estimate remaining program life cycle buy value. *Step 39.* Apply either a savings factor of 25% or one determined under local conditions and experience. *Step 40.* Multiply the remaining program life cycle buy value by the savings factor to obtain the expected future savings, if the part is coded for breakout.

(c) Computation of Breakout Costs (Steps 41–47). Several groups of costs must be collected, summarized and compared to estimated savings to properly determine the economics of breakout. These costs include:

(1) Direct Costs (Steps 41–45). Direct costs of breakout normally include all expenditures which are direct and wholly identifiable to a specific, successful breakout action, and which are not reflected in the part unit price. Examples of direct costs include Government tooling or special test equipment, qualification testing, quality control expenses, and industry participation costs (such as completion of the Contractor Technical Information Data Record) if borne by the Government. *Step 41.* Estimate the cost to the Government for tooling or special equipment.*Step 42.* Estimate the cost, if any, to the Government for qualifying the new source. *Step 43.* Estimate the cost, if any, to the Government for assuring quality control, or the cost of contracting for quality control. *Step 44.* Estimate the cost to the Government for purchasing rights to data. *Step 45.* Add estimated total direct costs to the Government to breakout the item.

(2) Performance Specification Costs (Step 46–47). *Step 46.* Is the breakout candidate constructed to a performance specification? *Step 47.* If so, add performance specification breakout cost elements listed below to the result of Step 45.

i. The addition of an unknown number of nonstocked parts which must be stocked by the supply system for repairs is a significant element of cost associated with the decision to compete a performance specification assembly. (The same situation does not arise with respect to a design specification assembly since virtually all spare parts used to repair such an assembly are exact copies of parts already in the assembly.) The cost of introducing these nonstocked parts into the system includes:

(A) Additional catalog costs. The number of nonstocked parts forecasted to be in the complete assembly, multiplied by the variable cost of cataloging per line item.

(B) Additional bin opening costs. The number of nonstocked parts forecasted to be in the completed assembly, multiplied by the variable cost of a bin opening at each of the locations where the part is to be stocked.

(C) Additional management costs. The number of nonstocked parts forecasted to be in the completed assembly, multiplied by the variable cost of management per line item.

(D) Additional technical data costs. The cost of a new set of technical data for the completed assembly, including the variable expenses of its production, reproduction, and distribution.

(E) Additional repair tools and test equipment costs. The costs of additional special tools and test equipment not otherwise required by the existing assembly.

(F Additional logistics support costs. The costs associated with the new item such as spare and repair parts, technical manuals, and training.

(d) Comparision of Savings and Costs (Step 48–56). Compare estimated breakout costs to forecasted breakout savings. If costs exceed estimated savings, it will be uneconomical to compete the part. Performance specification parts should be analyzed to ensure that pertinent breakout costs have been considered and, if it is not economical to breakout the part, whether an appropriate design specification package reduces costs sufficiently to make breakout economical.

(1) *Step 48.* Compare total costs of breakout (Step 47) to estimated savings (Step 40).

(2) *Step 49.* Are costs of breakout greater or less than estimated saving? If greater, proceed to Step 50; if less, proceed to Step 57.

(3) *Step 50.* Is the breakout candidate constructed to a performance specification? If no, proceed to Step 54; if yes, proceed to Step 51.

(4) *Step 51.* Is it appropriate to obtain a design specification package? Is yes, proceed to Step 52; if no, proceed to Step 54. The decision to change a performance specification part to a design specification part obviously requires a critical engineering examination of the part itself, as well as a review of the impact such a change might have on the operational effectiveness of the system in which the equipment is to be employed. Procurement of a performance specification part by a subsequently acquired design specification subjects the Government to the additional hazard of losing the money paid for the development of the design specification, should the design be altered during the procurement lead time period. Accordingly, the engineering evaluation should closely review design stability over the anticipated procurement lead time in order to avoid procuring an obsolete or nonstandard part if the decision is made to compete it.

(5) *Step 52.* Add the estimated cost of obtaining a design specification package to the results of Step 45.

(6) *Step 53.* If the results of step 52 are less than the estimated savings, initiate action to obtain a design specification package. Proceed to Step 54 to code the part for a period until it can be rescreened using the design specification package. The code determined in this screening shall be assigned a suspense date commensurate with the lead time required to obtain the design specification package (see S6–203(b)).

(7) *Step 54.* Is the part manufactured by the prime contractor? If yes, code the part AMC 3; if no, proceed to Step 55.

(8) *Step 55.* Can the part be acquired directly from the actual manufacturer? If no, proceed to Step 56; if yes, code the part AMC 3 or 4, as applicable.

(9) *Step 56.* Specify the reasons for inability to obtain the part from the actual manufacturer. Code the part AMC 5.

S6–303.6 *Supply Feedback Phase (Steps 57–65).*

(a) The supply feedback phase of the analysis is the final screening phase for breakout parts. This phase is completed for all AMC 2 parts to determine if sufficient time is available to breakout on the immediate buy and to communicate this information to the inventory manager responsible for the requirement. Forst, all additional time factors required to breakout the part are added. Total time is subtracted from the immediate and future buy date and the result compared to the current date. (Note: Not all time factors listed apply to each part screened.) If the result is the same or earlier than the required contract date, the part is coded competitive and action is begun to qualify additional sources as necessary. If the result is later than the required contract date, action to compete the immediate buy quantity should be initiated if the inventory manager can

find some means of accepting later delivery. If this is impossible, the appropriate records should be annotated for competitive acquisition of the next replenishment buy quantity. If late delivery is acceptable, the inventory manager should compute requirements for the part and initate an appropriate purchase requisition.

(b) Procedures.

(1) *Step 57.* Add all additional time factors required to breakout the part (Steps 13, 14, 29, 36).

(2) *Step 58.* Add the results of Step 57 to the date of this review.

(3) *Step 59.* Compare the result of Step 58 to the date that the contract or order must be placed.

(4) *Step 60.* Is the result of Step 59 earlier than, later than, or the same as the contract or order date? (If earlier or the same, proceed to Step 61; if later, to Step 63.)

(5) *Step 61.* Can supply accept late delivery? If yes, go to Step 62; if no, go to Step 63.

(6) *Step 62.* Notify the inventory manager to compute requirements and initiate a purchase requisition. Go to Step 64.

(7) *Step 63.* Code the part AMC 2. Insufficient time to compete on this buy.

(8) *Step 64.* Code the part AMC 2.

(9) *Step 65.* Begin actions to qualify new sources, if required and possible.

S6–304 *Limited Screening Procedures.*

(a) Limited screening procedures are only appropriate when the full screening process cannot be completed for a part in sufficient time to support an immediate buy requirement. If limited screening does not result in a competitive AMC and the part is characterized by a high buy value and high buy quantity in the annual buy forecast, full screening procedures shall be immediately initiated.

(b) Limited screening procedures cover only the essential points of data and technical evaluations more completely described in full screening procedures (see S6–303). Extensive legal review of rights or technical review of data is not required; nor is back-up information on type and extent of qualification testing, quality control procedures and master tooling required. A summary flow chart of the limited screening decision steps is provided at Exhibit III.

(c) The limited screening decision steps are followed sequentially if the answer to the question in each step is affirmative. If any step is answered in the negative, proceed directly to Step 10.

(1) *Step 1.* Assemble all available data and establish a file for each part. Collect identification data, relevant data obtained from industry, contracting and technical history data and current status of the part (see S6–303.1)

(2) *Step 2.* Do the available documents establish full Government rights to use the data for acquisition purposes? If the Government's rights to use data in its possession is questionable, resolution of the rights must continue beyond award of the immediate buy.

(3) *Step 3.* Is the data package sufficient, accurate and legible? If the Government does not have in its possession sufficient, accurate or legible data, action shall be promptly initiated to resolve the deficiency for the next buy.

(4) *Step 4.* Is the design of the part stable over the anticipated acquisition leadtime?

(5) *Step 5.* Is a satisfactory part now being produced?

(6) *Step 6.* Can the part be acquired from a new source without prior qualification testing or other approval testing?

(7) *Step 7.* Can the Government or a new source be responsible for quality assurance?

(8) *Step 8.* Can the part be manufactured without master or coordinated tooling or other special equipment; if no, is there more than one source which has the tooling or special equipment?

(9) *Step 9.* Assign AMC 2. Proceed to Step 11.

(10) *Step 10.* Assign AMC 3, 4 or 5, as appropriate.

(11) *Step 11.* Establish the date of the next review (see S6–104(c) and S6–203(b)).

Part 4—Contractor's Assistance

S6–400 *General.*

(a) Contractor's assistance in screening shall be requested on selected parts only after consideration of the benefit expected from the contractor's technical information and the cost to the Government of obtaining such assistance.

(b) Contractor's assistance shall not be requested for parts covered by Government/Industry specifications, commercially available parts or parts for which data is already available.

(c) Arrangements entered into with contractor to obtain technical information shall provide that (i) contractors will exert their best effort to make impartial technical evaluations using applicable technical data and the experience of competent personnel, and (ii) no costs to the Government will be incurred for duplicate screening of parts.

S6–401 *Contractor's Technical Evaluation Procedures.*

(a) Contractor's technical evaluation for the screening process shall be required contractually by incorporating MIL–STD–789, which delineates the contractor's responsibilities and procedures and prescribes use of the contractor Technical Information Record, DD Form 1418, and the Technical Data Identification Checklist, DD 1418–1, a copy of each document listed on DD Form 1418–1, and other substantive data that was used in developing the contractor's recommendations.

(b) When MIL–STD–789 is incorporated in a contract, the Contract Data Requirements List, DD Form 1423, shall specify the requirement for the submission of DD Form 1418 and DD Form 1418–1 in accordance with MIL–STD–789.

Part 5—Reporting System

S6–500 *General.* This part prescribes reports regarding the breakout program which cannot be obtained from other sources. These reports are used to evaluate the effectiveness of breakout programs, establish a baseline for all spare part acquisitions, and identify trends in spare parts acquisition.

S6–501 *Reports.*

(a) Spare Parts Breakout Screening Report (RCS DD P&L(Q&SA) 714A). This is a cumulative semi-annual report reflecting the accomplishments of the breakout program. The report describes the results of full and limited screening for provisioning and replenishment parts by number of different NSNs for each AMC. Each DoD Component shall also maintain actual cost data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually.

(b) Spare Parts Acquisition Report (RCS DD P&L(Q&SA) 714B). This is a cumulative semi-annual report for all purchases made of spare parts during the current fiscal year. This report describes the number and extended dollar value of different NSNs purchased for each AMC. Each DoD Component shall also maintain actual savings (or cost avoidance) data attributable to the Spare Parts Breakout Program which shall be forwarded on this report semi-annually. Because of extraneous factors such as procurement leadtimes and changes in spare parts requirements, this report will not always reflect the acquisition of the parts screened during a reporting period (contained on the Spare Parts Breakout Screening Report). Also, it will not show in all instances how the part was actually procured. This report is intended to be an indication of the

success of the breakout program, and designed to show trends in the coding and data available to buyers in the procurement package.

S6–502 *Reporting Procedures.*

(a) Each Department shall maintain and forward semi-annual reports. The second semi-annual report in a fiscal year shall reflect cumulative totals for the current fiscal year using the attached formats (see Exhibits IV and V).

(b) The reports will be due no later than 45 days after the end of each period designated.

(c) Submissions will be made to the Assistance Secretary of Defense (Production and Logistics), Attention: Deputy Assistant Secretary for Logistics.

S6–503 *Corrections and Revisions.* Corrections and revisions to the mid-year report shall be contained in the year-end report. Corrections and revisions to the year-end report shall be submitted within 30 days after the due date of the report.

S6–504 *Reporting Instructions.*

(a) Spare Parts Breakout Screening Report. Using the attached format, Exhibit IV, provide the following:

(1) Enter reporting activity name, fiscal year and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs for which screening was completed during the period. Show zeros where applicable. This should be done for both full and limited screening.

(3) Report the total costs of the breakout program incurred for the period. Although this will be primarily labor costs, it should also include appropriate prorated costs of ADP services, office overhead, data retrieval service costs, etc. (see S6–303.5).

(b) Spare Parts Acquisition Report. Using the attached format, Exhibit V, provide the following:

(1) Enter reporting activity name, fiscal year and period ending.

(2) For each AMC/AMSC listed, enter the number of different NSNs purchased during the current fiscal year and their extended dollar value.

(3) Report the actual breakout program savings or cost avoidances as measured by completed procurements (not anticipated procurements). Price differentials should be measured on each procurement where a breakout action has taken place. They should equal the difference between the previous contract unit price and the current contract unit price, times the number of units purchased.

VALID AMC/AMSC COMBINATIONS

| AMSC | AMC | | | | | |
|---|---|---|---|---|---|---|
| | 0 | 1 | 2 | 3 | 4 | 5 |
| A | X | ● | ● | ● | ● | ● |
| B | X | ● | ● | ● | ● | ● |
| C | X | ● | ● | ● | ● | ● |
| D | X | X | X | ● | ● | ● |
| G | X | ● | ● | X | X | X |
| H | X | ● | ● | ● | ● | ● |
| K | X | ● | ● | ● | ● | ● |
| L | X | ● | ● | ● | ● | ● |
| M | X | ● | ● | ● | ● | ● |
| N | X | ● | ● | ● | ● | ● |
| O | ● | X | X | X | X | X |
| P | X | ● | ● | ● | ● | ● |
| Q | X | ● | ● | ● | ● | ● |
| R | X | ● | ● | ● | ● | ● |
| S | X | ● | ● | ● | ● | ● |
| T | X | ● | ● | X | X | X |
| U | X | ● | ● | ● | ● | ● |
| V | X | ● | ● | ● | ● | ● |
| Z | X | ● | ● | ● | ● | ● |

●=Valid combinations.
X=Invalid combinations.

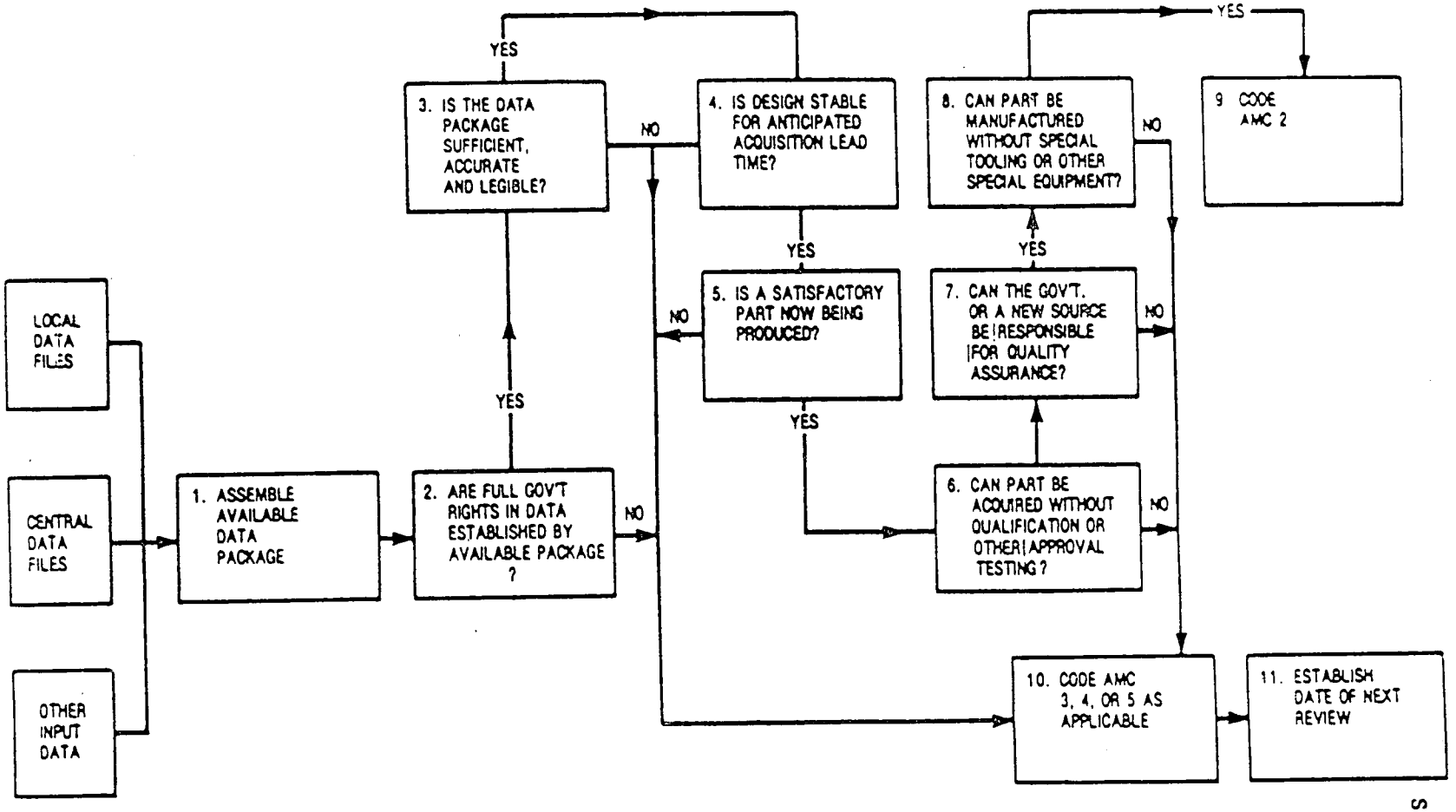
Exhibit II—Full Screening Decision Process Summary Flow Charts

This flow chart cannot be printed because of its size. The exhibit may be obtained from Mr. Charles W. Lloyd (see the **Addresses** section of the preamble).

BILLING CODE 3810-01-M

# DOD SPARE PARTS BREAKOUT PROGRAM

## LIMITED SCREENING DECISION PROCESS SUMMARY FLOW CHART




S6:39

EXHIBIT III

SPARE PARTS BREAKOUT SCREENING REPORT

Reporting Activity_____ Fiscal Year_____ Period Ending_____

| AMC/AMSC | Number of NSNs | | |
|---|---|---|---|
| | Limited screening | Full screening | Total screening |
| *1 G Only | | | |
| 1 | | | |
| **2 G Only | | | |
| 2 | | | |
| 3 | | | |
| 4 | | | |
| 5 | | | |
| Total | | | |

*Excluded from AMC 1 data.
*Excluded from AMC 2 data.
SPARE PARTS BREAKOUT PROGRAM COSTS $_____

SPARE PARTS ACQUISITION REPORT

Reporting Activity_____ Fiscal Year_____ Period Ending_____

| AMC/AMSC | Purchases made | |
|---|---|---|
| | Number of NSNs | Extended dollar value |
| * 1 G Only | | |
| 1 | | |
| ** 2 G Only | | |
| 2 | | |
| 3 | | |
| 4 | | |
| 5 | | |
| Total | | |

*Excluded from AMC 1 data.
*Excluded from AMC 2 data.
SPARE PARTS BREAKOUT PROGRAM SAVINGS OR COSTS AVOIDANCES $_____

[FR Doc. 88-16053 Filed 7-18-88; 8:45 am]
BILLING CODE 3810-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

**[ERA Docket No. 88-16-NG]**

### IGI Resources, Inc.; Order Extending Blanket Authorization To Import Natural Gas From Canada

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of order extending blanket authorization to import natural gas from Canada.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order extending IGI Resources, Inc.'s (IGI), existing blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 88-16-NG authorizes IGI to import up to 100 Bcf over an additional two-year period until August 1, 1990, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 13, 1988.

**Constance L. Buckley,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 88-16234 Filed 7-18-88; 8:45 am]
BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

**[Project Nos. 18-001 et al.]**

### Idaho Power Co. et al.; Intent To Prepare a Supplement to a Draft Environmental Impact Statement and To Hold Public Meetings

July 15, 1988.

Four applications have been filed for licenses for hydropower projects located on the Upper Snake River in Cassia,

Jerome, Minidoka, and Twin Falls Counties, Idaho. These projects are the Twin Falls Project (FERC No. 18), the Milner Project (FERC No. 2899), the Auger Falls Project (FERC No. 4797), and the Star Falls Project (FERC No. 5797). The Twin Falls Project would involve construction of a new powerhouse at the existing project, the Milner Project would involve modifications to existing facilities, and the other two projects would be entirely new facilities.

The Commission staff has previously determined that issuance of licenses for the proposed hydroelectric projects would constitute a major Federal action significantly affecting the quality of the human environment. The staff therefore prepared a Draft Environmental Impact Statement (EIS), which was completed in November 1987. There are significant new circumstances and information bearing on the proposed actions and their impacts. In order to address this information, the Commission staff intends to prepare a Supplement to the Draft EIS prior to issuing a Final EIS. Further, public meetings are scheduled for August 1988. A document describing the new circumstances and new information will be sent to all recipients of this notice prior to the public meetings. This document will be discussed during the public meetings, and these meetings will also provide an opportunity for the public to provide input on the new circumstances and new information.

**Public Meetings**

Interested agencies, officials, and members of the public are invited to express their views about the projects in these public meetings. There will be two public meetings held on August 18, 1988, at the Holiday Inn Convention Center, 1350 Blue Lakes Boulevard North, Twin Falls, Idaho 83301. The first meeting will be held from 1:00 p.m. to 4:00 p.m.; the second meeting will be held from 7:00 p.m. to 10:00 p.m. The public meetings will be conducted by the Commission's staff. For further information, contact Kathleen Sherman at 202-376-9527.

At the public meetings persons may give their statements orally or in writing. The meetings will be recorded by a stenographer, and all statements (oral and written) will become part of the public meeting record. In addition, the public meeting record will remain open until October 1, 1988, and anyone may submit written comments until that time. Comments should be addressed to Lois D. Cashell, Acting Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should clearly show the project names and numbers (*e.g.*, the Twin Falls Project, FERC No. 18-001; the Milner Project FERC No. 2899-003, *etc.*) on the first page.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16219 Filed 7-18-88; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI64-676-000 et al.]**

## Mesa Operating Limited Partnership et al.; Applications for Certificate, Abandonment of Service and Amendment of Certificates [1]

July 15, 1988.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce, to abandon service or to amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 28, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Acting Secretary.*

[Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage: D—Amendment to delete acreage; E—Total succession; F—Partial succession]

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| CI64-676-000, D, 6/23/88 | Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, TX 75221-2880. | Northern Natural Gas Company, Division of Enron Corp., Mammoth Creek Field, Lipscomb Count, Texas. | (1) |
| CI68-757-000, D, 6/28/88 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819 Dallas, TX 75221. | Panhandle Eastern Pipe Line Company, Putnam Field, Dewey County, Oklahoma. | (2) |
| CI76-73-002, D, 6/28/88 | .....do..... | Transwestern Pipeline Company, South Empire Deep Unit, Eddy County, New Mexico. | (3) |
| CI81-224-001, D, 6/29/88 | Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221. | Trunkline Gas Company, Eugene Island Block 377, Offshore Louisiana. | (5) |
| CI88-499-000 (CI64-1314), B, 6/22/88 | Enron Oil & Gas Company, P.O. Box 1188, Houston, TX 77251. | Valley Gas Transmission Inc., Sejita Field, Duval County, Texas. | (6) |
| CI88-500-000 (CI75-200), B, 6/22/88 | .....do..... | Valley Gas Transmission, Inc., LaHuerta Field, Duval County, Texas. | (7) |
| CI88-501-000 (CI70-867), B, 6/22/88 | .....do..... | CNG Transmission Corporation, Collins Settlement District, Lewis County, West Virginia. | (8) |
| CI88-504-000 (CI86-163-000), B, 6/20/88. | TXO Production Corp., First City Center, 1700 Pacific Center, Dallas, TX 75201. | ANR Pipeline Company, Laverne Field, Harper County, Oklahoma. | (9) |
| CI88-505-000, F, 6/24/88 | Union Pacific Resources Company, P.O. Box 7, M.S. 3202, Fort Worth, TX 76101. | Tennessee Gas Pipeline Company, Stratton-Agua Dulce Field, Nueces County, Texas. | (10) |

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Filing Code: A—Initial service; B—Abandonment; C—Amendment to add acreage: D—Amendment to delete acreage; E—Total succession; F—Partial succession]

| Docket No. and date filed | Applicant | Purchaser and location | Description |
|---|---|---|---|
| CI88-506-000 (CI66-1267), B, 6/27/88 | Conoco Inc., P.O. Box 2197, Houston, TX 77252 | Arkla Energy Resources, a division of Arkla, Inc., Danville Field, Bienville & Jackson Parishes, Louisiana. | (11) |
| CI88-507-000 (CI66-129), B, 6/27/88 | Sun Exploration & Production Company | El Paso Natural Gas Company Basin Dakota Field, San Juan County, New Mexico. | (12) |
| CI88-508-000 (CI78-655), B, 6/27/88 | do | Northwest Pipeline Corporation, Blanco (Pictured Cliffs) Field, Rio Arriba County, New Nexico. | (13) |
| CI88-509-000 (CI65-1243), B, 6/27/88 | do | El Paso Natural Gas Company, Gallegos Canyon, et al., San Juan County, New Mexico. | (12) |
| CI88-510-000 (G-15300), B, 6/28/88 | ARCO Oil and Gas Company, Division of Atlantic Richfield Company. | El Paso Natural Gas Company, Vinegarone Field, Val Verde County, Texas. | (3) |

[1] Well was plugged and abandoned. Leases 1204, 1204-01 and 1204-02 were released.
[2] Effective 12-5-73, ARCO assigned its interest in certain acreage to Zoller and Danneberg Inc.
[3] Effective 1-1-87, ARCO assigned its interest in certain acreage to Hondo Oil and Gas Company.
[4] Not used.
[5] Lease was released to Minerals Management Service on 9-21-86.
[6] Effective 3-1-76, HNG Oil Company conveyed all of its interest in certain acreage to Glen A. Martin, and since Enron is the successor company to HNG, Enron requests that the certificate of public convenience and necessity issued in Docket No. CI64-1314 be terminated and HNG's related Rate Schedule Nos. 14 and 15 be cancelled.
[7] By Assignment dated 3-28-79, HNG assigned all of its interest in certain acreage to Robert Kibbe, and since Enron is the successor company to HNG, Enron requests that the certificate of public convenience and necessity issued in Docket No. CI75-200 be terminated and HNG's related Rate Schedule No. 32 be cancelled.
[8] Natural gas depleted.
[9] The Nellie Scott #1 well, the only well covered under the 2-22-67, contract, became depleted and on 5-7-87, was plugged.
[10] By Assignments dated 12-30-87, effective 1-8-88, Fina Oil and Chemical Company and Almaka, Ltd., conveyed to UPRC 100% of Fina's and Almaka's right, title and interest in certain oil and gas leases in the Stratton-Agua Dulce Field, Nueces County, Texas dedicated under the contract dated 1-11-81.
[11] Conoco has no remaining leasehold interest subject to Rate Schedule No. 314.
[12] Effective 12-1-87, Sun assigned its interest in Propety No. 865698, State E. Gas Com. #1, Lease No. 913510, to El Paso Production Company.
[13] Effective 12-1-87, Sun assigned its interest in Property No. 695976, San Juan 29-5, Lease No. 914192, to El Paso Production Company.

[FR Doc. 88-16221 Filed 7-18-88; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. RP88-44-006]**

## El Paso Natural Gas Co.; Motion to Place Tariff Sheets Into Effect and Compliance Filing

July 14, 1988.

Take notice that El Paso Natural Gas Company (El Paso), on July 1, 1988, tendered for filing a motion to place into effect on July 1, 1988 certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A, Third Revised Volume No. 2 and Original Volume No. 2A, and the rates and modifications set forth therein.

El Paso states that on December 31, 1987, it filed with the Commission on Docket No. RP88-44-000, among other things, a notice of change in rates and certain tariff provisions for natural gas service rendered to jurisdictional customers. By order issued January 29, 1988 at Docket Nos. RP88-44-000, *et al.*, the Commission conditionally accepted certain of the tariff sheets for filing and suspended their effectiveness for five (5) months to become effective July 1, 1988, subject to refund. Thereafter by orders issued March 31, 1988 and June 21, 1988 the Commission rejected compliance filings made by El Paso responsive to Commission orders.

On June 1, 1988, El Paso filed at Docket No. RP88-44-004, tariff sheets to reflect certain modifications to those rates which were suspended until July 1, 1988 at Docket No. RP88-44-000. Such rates differ from the rates reflected in the revised compliance filing of May 6, 1988 at Docket No. RP88-44-003 in that the revised compliance rates were adjusted for the removal of take-or-pay buyout and buydown costs, an increase in throughput quantity and certain other adjustments. By order issued on June 30, 1988, the Commission approved certain of the tariff sheets, subject to refund and conditioned upon El Paso filing revised sheets within fifteen (15) days of the issuance of an order at Docket No. RP88-44-004 which comply with the Commission's January 29, 1988 order in said proceeding.

El Paso's motion placed into effect those tariff sheets approved by the Commission's June 30, 1988 order together with those tariff sheets not subject to rejection by the March 31, 1988 and June 21, 1988 orders. Additionally, El Paso requested waivers as may be appropriate. El Paso states that in order to comply with the conditions of the June 30, 1988 order, El Paso will file new rates on or before July 15, 1988, which El Paso moves to become effective July 1, 1988.

Copies of the filing were served upon each person designated on the official service list compiled by the Secretary in Docket No. RP88-44-000, and otherwise, upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.11 (1987)). All such motions or protests should be filed on or before July 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16220 Filed 7-18-88; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. RP88-63-005]**

## Northwest Pipeline Corp.; Change in FERC Gas Tariff

July 15, 1988.

Take notice that on July 8, 1988, Northwest Pipeline Corporation ("Northwest"), in compliance with the order issued by the Federal Energy Regulatory Commission ("Commission") on June 22, 1988 in Docket No. RP88-63-000, submitted the following tariff sheet to be a part of its FERC Gas Tariff. Northwest requests an effective date of August 4, 1988.

Original Volume No. 1-A

Third Revised Sheet No. 415

Northwest states the purpose of this filing is to revise the above-listed tariff sheet to comply with the conditions set forth in the Commission's June 22 Order, requiring Northwest to provide that interruptible transportation customers are required to tender gas within 15 days, rather than the 60 day period provided in the original filing in this docket.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before July 22, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16222 Filed 7-18-88; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FR-3416-1]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for reveiw and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Carla Levesque at EPA, (202) 382-2740.

**SUPPLEMENTARY INFORMATION:**

### Office of Administration Resources Management

*Title:* Acquisition Solicitations (RFP's and IFB's). (EPA ICR #1938).

*Abstract:* Full and open competition in the EPA procurement process is required under the Federal Acquisition Regulation (FAR). Request for Proposals (RFPs) or Invitations for Bids (IFBs) are used by the Agency to solicit acquisitions. Businesses desiring to sell goods of services to EPA submit proposals or bids, depending on the specific needs of the solicitation.

*Burden Statement:* Public reporting burden for this collection of information is estimated to average 84.9 hours per year per respondent. This estimate includes the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the recollection of information.

*Respondents:* Businesses.

*Estimated No. of Respondents:* 2,046.

*Estimated Total Annual Burden on Businesses:* 203,890 hours.

*Frequency of collection:* 1 per FRP of IFB.

*Title:* Contractor Cumulative Claim and Reconciliation EPA From 1900-10. (EPA ICR #0246).

*Abstract:* At completion of "cost-reimbursement" type contracts, all costs invoiced must be reconciled as reimbursable under the contract. Contractors must complete EPA 1900-10 to serve as a basis for initiating a final audit of the contract.

*Burden Statement:* Public reporting burden for this colleciton of information is estimated to average 0.5 hours per year per respondent. This estimate includes the time to review instructions, researching existing data sources, process/compile data, and complete form 1900-10.

*Respondents:* EPA contractors.

*Estimated Number of Respondents:* 300.

*Estimated of Average Response Frequency:* 1 per contract.

*Total Estimated Annual Burden:* 150 hours. Send comments regarding these burden estimates, or any other aspects of these collecitons of information, including suggestions for reducing the burden, to:

Carla Levesque, U.S. Environmental Protection Agency, Information Policy Branch (PM 223), 401 M Street SW., Washington, DC 20460

and

Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jachson Place NW., Washington DC 20503, Telephone (202) 395-3084.

### OMB Responses to Agency PRA Clearance Requests

EPA ICR #1012; PCB Disposal Permitting Regulations; was approved 06/27/88; OMB #2070-0011; expires 06/30/91.

EPA ICR #1246; Reporting and Recordkeeping for Asbestos abatement Worker; was approved 06/27/88/; expires 06/30/91.

EPA ICR #0234; Laboratory Performance Evaluation of Water and Waste Laboratories; was approved 06/28/88: expires 06/30/91.

**Paul Lapsley,**

*Acting Director, Information and Regulatory Systems Division.*

[FR Doc. 88-16193 Filed 7-18-88; 8:45 am]

BILLING CODE 6560-50-M

**[OPTS-59261B; FRL-3415-9]**

## Certain Chemicals Approval of a Test Marketing Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME-88-14. The test marketing conditions are described below.

**EFFECTIVE DATE:** July 6, 1988.

**FOR FURTHER INFORMATION CONTACT:** Keith Cronin, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street SW., Washington, DC 20460 (202-382-3769).

**SUPPLEMENTARY INFORMATION:** Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test

marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-88-14. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-88-14. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

**T-88-14**

*Date of Receipt:* May 23, 1988.

*Notice of Receipt:* June 13, 1988 (53 FR 22044).

*Applicant:* Confidential.

*Chemical:* (G) Acid ester.

*Use:* (G) Dispersive use.

*Production Volume:* Confidential.

*Number of Customers:* Confidential.

*Test Marketing Period:* Eighteen months, commencing on first day of manufacture.

*Risk Assessment:* EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: July 6, 1988.

**Wendy Cleland-Hamnett,**

*Deputy Director, Chemical Control Division, Office of Toxic Substances.*

[FR Doc. 88-16186 Filed 7-18-88; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted to Office of Management and Budget for Review

July 12, 1988.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785.

OMB Number: 3060-0343

Title: 47 CFR 25.391—Qualifications of Domestic Satellite Space Station Licensees

*Action:* Extension

*Respondents:* Businesses

*Frequency of Response:* On occasion

*Estimated Annual Burden:* 25 Responses; 25,000 Hours

*Needs and Uses:* To enable the Commission to determine whether domestic fixed-satellite space station applicants are financially, technically, and legally qualified to construct, launch, and operate their proposed systems and have a justified need for additional satellites, applicants are required to submit certain documentation.

*OMB Number:* 3060-0339

*Title:* Section 78.11, Permissible Service

*Action:* Extension

*Respondents:* Businesses (including small businesses)

*Frequency of Response:* On occasion

*Estimated Annual Burden:* 190 Responses, 47 Hours; 1,895 Recordkeepers, 947 Hours; 994 Total Hours

Needs and Uses: Records kept by cable television relay service licensees in accordance with section 78.11 are used by FCC staff to ensure that contributions to capital and operating expenses are accepted only on a cost-sharing, nonprofit basis. Notifications filed with the FCC are used to provide information regarding alleged interference.

*OMB Number:* 3060-0341

*Title:* Section 73.1680, Emergency Antennas

*Action:* Extension

*Respondents:* Businesses (including small businesses) and nonprofit institutions

*Frequency of Response:* On occasion

*Estimated Annual Burden:* 119 Responses; 119 Hours

*Needs and Uses:* Within 24 hours of commencement of use of an emergency antenna, a licensee of an AM, FM, or TV station must submit an informal request to the FCC to continue operation with the emergency antenna. This information is used by FCC staff to ensure that interference is not caused to other stations.

Federal Communications Commission.

**H. Walker Feaster III,**

*Acting Secretary.*

[FR Doc. 88-16185 Filed 7-18-88; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Office of Training

### Board of Visitors for the Emergency Management Institute; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: July 31, 1988 to August 3, 1988.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, MD 21727.

Time: July 31—7:00 p.m. to 9:00 p.m.; August 1—8:30 a.m. to 5:00 p.m.; August 2—8:30 a.m. to 5:00 p.m.; August 3—8:30 a.m. to Agenda Completion.

Proposed Agenda: Welcome/orientation for 3 new members; follow-up on action items from April meeting.

The meeting will be open to the public with approximately ten seats available on a first-come, first-serve basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, Office of Training, 16825 South

Seton Avenue, Emmitsburg, Maryland 21727, (telephone number, 301–447–1251), on or before July 20, 1988.

Minutes of the meeting will be prepared by the Board and will be available for public viewing in the Director's Office, Office of Training, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, MD 21727. Copies of the minutes will be available upon request 30 days after the meeting.

**William Neville,**

*Acting Director, Office of Training.*

Dated: July 13, 1988.

[FR Doc. 88–16157 Filed 7–18–88; 8:45 am]

BILLING CODE 6718–21–M

## FEDERAL HOME LOAN BANK BOARD

**[No. AC–727; FHLBB No. 2976]**

### Franklin First Federal Savings & Loan Association of Wilkes-Barre, Wilkes-Barre, PA, Final Action Approval of Conversion Application

Date: July 13, 1988.

Notice is hereby given that on July 8, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Franklin First Federal Savings and Loan Association of Wilkes-Barre, Wilkes-Barre, Pennsylvania for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Pittsburgh, One Riverfront Center, 20 Stanvix Street, Pittsburgh, Pennsylvania 15222–4893.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–16201 Filed 7–18–88; 8:45 am]

BILLING CODE 6720–01–M

**[No. AC–726; FHLBB No. 3196]**

### The Long Island City Savings & Loan Association, Long Island City, NY; Final Action Approval of Conversion Application

Date: July 8, 1988.

Notice is hereby given that on July 1, 1988, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of The Long Island City Savings and Loan Association, Long Island City, New York, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariat at the Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of New York, One World Trade Center, Floor 103, New York, New York 10048.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–16202 Filed 7–18–88; 8:45 am]

BILLING CODE 6720–02–M

**[No. AC–728]**

### Robert Treat Savings & Loan Association of Newark, Newark, NJ; Final Action Approval of Conversion Application

Date: July 14, 1988.

Notice is hereby given that on June 30, 1988, the Office of General Counsel and the Office of Regulatory Policy, Oversight and Supervision, ("ORPOS") or their respective designees, acting pursuant to delegated authority, approved the application of Robert Treat Savings and Loan Association of Newark, Newark, New Jersey ("Robert Treat"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the Office of District Banks, with the concurrence of ORPOS and the Office of General Counsel, approved the application for Robert Treat to merge into AmeriFederal Savings Bank, Lawrenceville, New Jersey.

By the Federal Home Loan Bank Board.

**Nadine Y. Washington,**

*Assistant Secretary.*

[FR Doc. 88–16203 Filed 7–18–88; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–004008–008.

*Title:* Port of Oakland Terminal Agreement.

*Parties:*

Port of Oakland

Marine Terminals Corporation (MTC)

*Synopsis:* The agreement provides for direct payment of tariff charges to the Port by all users of the assigned premises and for Port payment to MTC of its compensation under the basic agreement.

*Agreement No.:* 224–200139.

*Title:* Port of New York and New Jersey Terminal Agreement.

*Parties:*

Port Authority of New York and New Jersey (Port Authority)

Sea-Terminals, Inc. (ST)

*Synopsis:* The proposed agreement provides for ST's use of the Port Authority's Howland Hook Marine Terminal for loading and unloading cargoes, storage of cargo, cargo-containers and equipment, and parking of motor vehicles.

*Agreement No.:* 224–010642–004.

*Title:* Port of Oakland Terminal Agreement.

*Parties:*

Port of Oakland

Stevedoring Services of America (SSA)

*Synopsis:* The agreement provides for direct payment of tariff charges to the Port by all users of the assigned premises and for the Port payment to SSA of its compensation under the basic agreement.

*Agreement No.:* 224–004067–005.

*Title:* Port of Oakland Terminal Agreement.

*Parties:*

Port of Oakland

Stevedoring Services of America

*Synopsis:* The agreement provides for (1) direct payment to the Port by all users of the assigned premises of tariff charges applicable to such use and (2) Port payment to SSA of its compensation under the Agreement.

By Order of the Federal Maritime Commission.

Dated: July 13, 1988.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 88-16123 Filed 7-18-88; 8:45 am]

BILLING CODE 6730-01-M

## GENERAL SERVICES ADMINISTRATION

### Availability of Draft Environmental Impact Statement for the Proposed Federal Building in Downtown Chicago, IL

July 15, 1988.

The General Services Administration (GSA) has prepared a Draft Environmental Impact Statement (DEIS) for the proposed construction of a 600,000 occupiable square foot Federal Building in downtown Chicago. The limits of the geographical area under consideration for the building are bounded to the north and west by the Chicago River, to the east by Lake Michigan, and to the south by Congress Parkway.

The proposed Federal Building will house the regional headquarters of various Federal agencies. The principal utilization of the facility will be for administrative and management functions; minimal public service functions are anticipated. Sixty parking spaces reserved for Government use will also be incorporated into the structure.

The building will be acquired through a lease finance mechanism which will place the property in private ownership for as long as thirty years. GSA intends to award a lease contract to a developer by the Fall of 1988. Offerors will identify, propose, and acquire the site, as well as suggest their own design for the building. Occupation of the completed facility is projected for mid-1991.

Copies of the Draft Environmental Impact Statement are available from: Matthew A. Kling, Planner, Planning Staff-5PL, 230 South Dearborn Street, Rm. 3618, Chicago, Illinois 60604, (312) 353-5610.

The Council on Environmental Quality regulations provide for a 60 day review period; comments can be directed to the person above.

**Richard G. Austin and Kenneth J. Kalshew,**

*Acting Regional Administrator.*

[FR Doc. 88-16172 Filed 7-18-88; 8:45 am]

BILLING CODE 6820-BR-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### National Institute for Occupational Safety and Health

### Grants for Education Programs in Occupational Safety and Health; Availability of Funds for Fiscal Year 1988

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1988 for training grants in occupational safety and health as authorized by section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in Part 86, "Grants for Education Programs in Occupational Safety and Health," of Title 42, Code of Federal Regulations (42 CFR Part 86). The objective of this grant program is to award funds to eligible institutions or agencies to pay part or all of the costs of the combination of long-term and short-term training activities in occupational safety and health.

Fund in the total amount of $9,880,000 will be available in Fiscal Year 1988. Approximately $8,600,000 of the total funds available will be utilized as follows:

1. To award approximately 14 new, renewal and continuation Educational Resource Center (ERC) training grants ranging from approximately $300,000 to $700,000 with the average award being approximately $500,000 (Program Announcement 51 FR 32963, September 17, 1986);

2. To award approximately 25 new, renewal or continuation long-term training grants ranging from approximately $10,000 to $200,000 with the average award being $50,000 to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (Program Announcement 52 FR 3172, February 2, 1987); and

3. To conduct the peer review and evaluations of all new, competing renewal and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period.

In addition, $1,100,000 of the total funds available will be awarded to Educational Resource Centers to support research training programs. The research training initiative was described in the ERC Program Announcement published in the **Federal Register** on September 17, 1986 (51 FR 32963). Program support is available for faculty, staff, student support, and other resources to train teachers and researchers in the various occupational safety and health disciplines.

Approximately $180,000 of the total funds available will be awarded to Educational Resource Centers to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 Stat. 1708-1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERC's in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980. The ERC continuing education program was described in the **Federal Register** on September 17, 1986 (51 FR 32963). Program support is available for faculty, staff, and other resources to provide occupational safety and health training to practicing professionals in State and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities. It is anticipated that the total funds available for awards for this program in the future will be approximately as follows: FY 1989—$250,000; FY 1990—$950,000; FY 1991—$1,100,000.

#### Eligible Applicants

Any public or private educational or training agency or institution located in a State is eligible to apply for a grant.

#### Application Procedures

Application forms for new, competing renewal, or supplemental applications may be obtained from: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305.

The original and six (6) copies of new, competing, renewal, or supplemental applications should be submitted to: Division of Research Grants, National Institutes of Health, Westwood Building, 5333 Westbard Avenue, Bethesda, MD 20816.

These applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant. The submission schedule is as follows:

*New/Renewal & Supplemental Receipt Dates*

October 1
February 1
June 1

Applications not received by a designated receipt date will be held for review in the next cycle.

An original and two (2) copies of non-competing continuation applications should be submitted to: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road, NE., Room 321, Atlanta, GA 30305.

**Review Procedures**

In reviewing long-term training grant applications, consideration will be given to:

1. The need for training in the program area outlined by the application.
2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.
3. Methods proposed to evaluate effectiveness of the training.
4. The degree of institutional commitment: Is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?
5. The competence, experience, training, time commitment to the program and availability of faculty to advise students.
6. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; whom they advise, role in designing curriculum and establishing program need.

In reviewing ERC grant applications, consideration will be given to:

1. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially with the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970.
2. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.
3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve Characteristics of an Educational Resource Center.
4. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, and critiques from continuing education courses.
5. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and of other professional staff in relation to the type and scope of training and education involved.
6. Institutional commitment to Center goals.
7. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

**Information**

Information on application procedures, copies of application forms, and other material may be obtained from Terry Maricle, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 321, Atlanta, Georgia 30305, telephone (404) 842-6511.

Technical assistance may be obtained from John T. Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533-8241.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.263, Occupational Safety and Health Training Grants.)

Dated: July 11, 1988.

**Larry W. Sparks,**

*Acting Director, National Institute for Occupational Safety and Health.*

[FR Doc. 88-16176 Filed 7-18-88; 8:45 am]
BILLING CODE 4160-19-M

## Food and Drug Administration

**[Docket No. 79P-0031]**

## Approved Variance For Infrared Illuminator; Availability

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that an extension of a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for infrared illuminators manufactured by STC Defense Systems. The product is designed to illuminate with invisible infrared radiation a dark field of view in order that it can be viewed with night vision equipment. The infrared illuminator is designed for covert operations by governmental, military, and law enforcement agencies.

**DATES:** The extension of the variance became effective April 13, 1988, and ends December 30, 1993.

**ADDRESS:** The application and all correspondence on the application have been placed on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** Under 21 CFR 1010.4 of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted STC Defense Systems, Brixham Rd., Paignton, Devon TQ4 7BE, England, an extension of a variance from the performance standard for laser products (21 CFR 1040.10 and 1040.11) for the Infrared Illuminator Models RT4A, RT5A, LM05, and LM10.

The original variance for these products was granted to the ITT Components Group and later transferred to STC Defense Systems. In addition, the variance is approved for the Infrared Illuminator Model LM18 under the same conditions. Specifically, the requirements of the laser products standard for which the variance was granted are the performance features of a remote interlock connector (21 CFR 1040.10(f)(3)); key control (21 CFR 1040.10(f)(4)); and emission indicator (21 CFR 1040.10(f)(5)(ii)).

Under the terms of the variance, the product will not incorporate a remote interlock connector, key control, or emission delay, although an alternate means (removable battery pack or normally-off power switches) shall be employed in place of the key control.

Therefore, on April 13, 1988, the requested extension of the variance was approved by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by 21 CFR 1010.2(a) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

In accordance with § 1010.4, the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177–1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: July 11, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–16131 Filed 7–18–88; 8:45 am]

BILLING CODE 4160–01–M

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**[Docket No. 88M–0188]**

## Bausch & Lomb Optics Center; Premarket Approval of Bausch & Lomb® B&L 70™ (Lidofilcon A) Soft (Hydrophilic) Contact Lenses and Bausch & Lomb® CW 79™ (Lidofilcon B) Soft Contact Lenses

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the BAUSCH & LOMB® B&L 70™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses for vision correction in aphakic persons with nondiseased eyes. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 29, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by August 18, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7940.

**SUPPLEMENTARY INFORMATION:** On April 14, 1988, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of the BAUSCH & LOMB®. B&L 70™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses and the BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses. The BAUSCH & LOMB® B&L 70™ (lidofilcon A) Soft (Hydrophilic) Contact lenses are for extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lenses are indicated for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lenses may be worn by persons who may exhibit up to 2.00 diopters (D) of astigmatism. These lens range in powers from −12.50 D to +8.00 D. The BAUSCH & LOMB® CW 79™ (lidofilcon B) Soft Contact Lenses are indicated for extended wear for vision correction in aphakic persons with nondiseased eyes. These lenses range in powers from +10.00 D to +20.00 D. The lenses are to be disinfected using either a heat (thermal) or a chemical (not heat) disinfection system. The application includes authorization from Allergan Medical Optics, Irvine, CA 92715, to reference the information contained in its approved applications for premarket approval (PMA) for the Sauflon 70 (lidofilcon A) and Sauflon PW (lidofilcon B) Soft (Hydrophilic) Contact Lenses (Docket No. 85M–0167; P790020).

On February 11, 1980, March 26, 1982, and January 28, 1983, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the Allergan Medical Optics' PMA No. P790020 and related supplements. On April 29, 1988, CDRH approved the application by Bausch and Lomb Optics Center by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the devise and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ–460), address above.

The labeling of the BAUSCH & LOMB® B&L 70™ CW 79™ (lidofilcon A) Soft (Hydrophilic) Contact Lenses and BAUSCH & LOMB® CW 79™ lidofilcon B) Soft Contact Lenses states that the lenses are to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylemthacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41–58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approved lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of

material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 FR 5.53).

Dated: July 11, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–16130 Filed 7–18–88; 8:45 am]

BILLING CODE 4160-01-M

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**[Docket No. 88M-0212]**

## Lamberts (Dalston) Ltd.; Premarket Approval of Prentif™ Cavity-Rim Cervical Cap

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Lamberts (Dalston) Ltd., Luton, England, for premarket approval, under the Medical Device Amendments of 1976, of the Prentif™ Cavity-Rim Cervical Cap for use by women of childbearing age as a barrier method of contraception. After reviewing the recommendation of the Obstetrics and Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of May 23, 1988, of the approval of the application.

**DATE:** Petitions for administrative review by August 18, 1988.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Raju G. Kammula, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301–427–7555.

**SUPPLEMENTARY INFORMATION:** On October 5, 1987, Lamberts (Dalston) Ltd., Luton LU1 5BW, England, submitted to CDRH an application for premarket approval of the Prentif™ Cavity-Rim Cervical Cap. The Prentif™ Cavity-Rim Cervical Cap is indicated for use by women of childbearing age as a barrier method of contraception. It is to be used in conjunction with a spermicidal cream or jelly to prevent pregnancy and must be left in place for a minimum of 8 hours after intercourse and may be left in place for a maximum of 48 hours (2 days).

On February 24, 1988, the Obstetrics and Gynecology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 23, 1988, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Raju G. Kammula (HFZ–470), address above.

### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 18, 1988, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554–555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: July 11, 1988.

**John C. Villforth,**

*Director, Center for Devices and Radiological Health.*

[FR Doc. 88–16129 Filed 7–18–88; 8:45 am]

BILLING CODE 4160-01-M

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## Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

### Clinical Chemistry and Clinical Toxicology Devices Panel

*Date, time, and place.* August 15 and 16, 1988, 9 a.m., Room 703A–727A, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, August 15, 1988, 9

a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; open public hearing, August 16, 1988, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 12 m.; closed presentation of data, 1 p.m. to 3 p.m.; closed committee deliberations, 3 p.m. to 4 p.m.; Kaiser Aziz, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7550.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before August 1, 1988, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss two premarket approval applications: (1) immunocytochemical assay employing monoclonal antibodies designed to detect estrogen receptor in human breast cancer tissue for use as an aid in the management of breast cancer, and (2) enzyme immunoassay for the quantitative measurement of human estrogen receptor in tissue cytosol to aid in the management of breast cancer patients.

*Closed presentation of data.* Trade secret and/or confidential commercial or financial information will be presented to the committee regarding the premarket approval applications for the above immunocytochemical assay and enzyme immunoassay. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

*Closed committee deliberations.* The committee will discuss trade secret and/or confidential commercial or financial information regarding the premarket approval applications for the above immunocytochemical assay and enzyme immunoassay. This portion of the meeting will be closed to permit discussions of this information (5 U.S.C. 552b(c)(4)).

**Anesthetic and Life Support Drugs Advisory Committee**

*Date, time, and place.* August 29, 1988, 8:30 a.m., Conference Room 10, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* Open public hearing, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 12:30 p.m.; closed committee deliberations, 1:30 p.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

*Agenda—Open public hearing.* Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should notify the committee contact person.

*Open committee discussion.* The committee will discuss: (1) myocardial oxygenation and contraction during isoflurane (Forane®, Anaquest) anesthesia, in patients with ischemic heart disease, and (2) new animal drug application Nos. 19-677 and 19-678, for edrophonium and atropine combination (Enlon Plus®, Anaquest).

*Closed committee deliberations.* The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug No. 25-394. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

Details on the agenda, questions to be addressed by the committee, and a current list of committee members are available from the contact person before and after the meeting. Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, Rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that

those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: July 12, 1988.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 88–16132 Filed 7–18–88; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[Charge Code: (OR120–6310–02: GP8–190)]**

### Intention To Close Public Lands; Coos County, OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to close public lands in Coos County, Oregon.

**SUMMARY:** This notice is to inform the public that the Bureau of Land Management (BLM) intends to close certain public lands on Coos Bay North Spit in Coos County to all public use, including recreation, off-road vehicle use, hiking and shooting in accordance with the current Habitat Management Plan (HMP) and the North Spit Amendment to the South Coast-Curry Management Framework Plan (MFP). Seasonal and year-round closure designations will be in effect. These designations will remain in effect until rescinded or modified by the Tioga Area Manager.

The public lands affected by this closure are specifically identified as follows:

**A. Seasonal Designation**

The area designated for seasonal closure comprises approximately three (3) acres of dredge spoils material east of the country road in Section 7, Lot 6, T. 25 S., R. 13 W., Will. Mer.

Public use will be precluded annually from March 15 to September 15. The designated area will be posted with signs.

**B. Year-Round Designation**

The area designated for year-round closure comprises approximately ten (10) acres of dredge spoils material west of the county road in Section 7, Lot 5, T. 25 S., R. 13 W., Will. Mer.

The designated area will be fenced and posted with signs. This closure will go into effect upon completion of the fence, approximately November 30, 1988.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure: Employees of the BLM, Oregon Department of Fish and Wildlife and Weyerheauser Company; and state, local and federal law enforcement and fire protection personnel. Access by additional parties may be allowed, but must be approved in advance in writing by the Tioga Area Manager.

These closures are in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), the Sikes Act (16 U.S.C. 670g) and 43 CFR, Subpart 8364.1. Any person who fails to comply with the provisions of this closure may be subject to penalties outlined in 43 CFR 8360.0–7.

The reason for these closures is to protect Western Snowy Plover nesting habitat as outlined in the HMP. Copies of the HMP are available from the Coos Bay District Office, 333 South Fourth St., Coos Bay, OR.

**FOR FURTHER INFORMATION CONTACT:** Richard M. Popp, Tioga Area Manager, Coos Bay District Office, at (503) 269–5880.

**Richard M. Popp,**

*Area Manager.*

[FR Doc. 88–16167 Filed 7–18–88; 8:45 am]

BILLING CODE 4310-33-M

**[CA-940-08-4212-13; CACA 20226]**

### California; Realty Action; Exchange of Public and Private Lands in Riverside and San Bernardino Counties and Order Providing for Opening of Public Land

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of issuance of land exchange conveyance document and opening order.

**ADDRESS:** Inquiries concerning the land should be addressed to: Chief, Branch of Adjudication and Records, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E–2841), Sacramento, California 95825.

**SUMMARY:** The purpose of this exchange was to acquire a portion of the non-Federal land within the 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserves. The land acquired does not constitute habitat for the lizard, but

provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. Other State and Federal agencies will acquire the remaining portions for the preserve. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to operation of the public land laws and to the full operation of the United States mining and mineral leasing laws.

**FOR FURTHER INFORMATION CONTACT:** Dianna Storey, California State Office, (916) 978–4815.

1. The United States issued a land exchange conveyance document to The Nature Conservancy on July 1, 1988, pursuant to the authority of section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described public land:

**San Bernardino Meridian, California**

T. 5 N., R. 14 E.,
Sec. 26, S½SE¼.

The area described contains 80 acres in San Bernardino County.

2. In exchange for the land described in paragraph 1, on July 1, 1988, the United States accepted title to the following described private land from the Nature Conservancy:

**San Bernardino Meridian, California**

T. 4 S., R. 7 E.,
Sec. 7, E½SW¼SE¼ and W½SE¼SE¼.

Except 50% of all mineral, gas, oil, and geothermal rights and substances under the real estate described in the deed, without rights of surface entry, as reserved in the deed from Lou R. Crandall and Marguerita Crandall, husband and wife, William V. Lawson and May Lou Lawson, husband and wife, Stanley N. Gleis and Kathleen R. Gleis, husband and wife, and William J.D. Lane and Kathleen C. Lane, husband and wife, each as to an undivided one-quarter interest, by deed recorded April 27, 1971, as Instrument No. 43314 of Official Records of Riverside County, California.

The area described contains 40 acres in Riverside County.

3. The values of the public land and the private land were equalized by the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

4. At 10 a.m. on August 22, 1988, the land described in paragraph 2 above shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on August 22, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order for filing.

5. At 10 a.m. on August 22, 1988, the land described in paragraph 2 above shall be open to location under the United States mining laws. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of opening is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Act required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

6. At 10 a.m. on August 22, 1988, the land described in paragraph 2 above shall be open to applications and offers under the mineral leasing laws.

Date: July 11, 1988

**Robert C. Nauert,**

*Chief, Branch of Adjudication and Records.*

[FR Doc. 88–16168 Filed 7–18–88; 8:45 am]

**BILLING CODE 4310–40–M**

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**[NM–940–08–4220–11; NM NM 014018, NM NM 016580, NM NM 016634, NM NM 023844, NM NM 0220340, NM NM 1411, NM NM 0556981]**

## Proposed Continuation of Withdrawals; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes that all or portions of withdrawals for the Alamo Peak Lookout, Bluewater Lookout, Cloudcroft, Administrative Site, Cloudcroft Recreation Area, Cloudcroft Roadside Zone, Deerhead Campground, James Canyon Campground, Karr Canyon Picnic Area, Mayhill Administrative Site, New Carrissa Lookout, Sleepy Grass Recreation Area, Week Lookout, Haynes Canyon Research Natural Area, and Wofford Lookout continue for an additional 20 years, and Ski Cloudroft Winter Sports Area continue for an additional 30 years which is the anticipated life of the projects. The lands will remain closed to mining and where closed be opened to surface entry. All of the lands have been and remain open to mineral leasing.

**DATE:** Comments should be received by October 17, 1988.

**ADDRESS:** Comments should be sent to: BLM, New Mexico State Director, P.O. Box 1449, Santa Fe, NM 87504–1449.

**FOR FURTHER INFORMATION CONTACT:** Clarence Hougland, BLM New Mexico State Office, 505–988–6554.

The Forest Service proposes that all or portions of the existing land withdrawals made by Public land Order Nos. 1040, 1073, 1074, 1663, 2798, and 4424 be continued for a period of 20 years, and a portion of Public Land Order No. 4643 be continued for a period of 30 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

**New Mexico Principal Meridian**

*Lincoln National Forest*

1. *NM NM 014018—Public Land Order No. 1040*
Cloudcroft Administrative Site
T. 16 S., R. 12 E.,
Sec. 5, NE¼ of lot 7.
2. *NM NM 016580—Public Land Order No. 1073*

*Deerhead Campground*

T. 16 S., R. 12 E.,
Sec. 5, lot 21;
Sec. 6, lots 23 and 24
3. *NM NM 016634—Public Land Order No. 1074*

*Alamo Peak Lookout*

T. 16 S., R. 11 E.,
Sec. 34, SW¼NW¼.

*Karr Canyon Picnic Area*

*(formerly Kar Canyon Forest Camp)*

T. 16 S., R. 11 E.,
Sec. 22, SW¼NW¼, NW¼SW¼.

*Wofford Lookout Tower*

T. 15 S., R. 13 E.,
Sec. 19 SW¼NE¼.

*Weed Lookout*

T. 17 S., R. 13 E.,
Sec. 25, E½NE¼NE¼.

*New Carrissa Lookout*

T. 19 S., R. 13 E.,
Sec. 4, SW¼SE¼SW¼;
Sec. 9, NW¼NE¼SW¼.

*James Canyon Campground*

T. 16 S., R. 14 E.,
Sec. 22, SW¼NW¼, NW¼SW¼.

*Mayhill Administrative Site*

T. 16 S., R. 14 E.,
Sec. 13 SW¼;
Sec. 14, E½SE¼;
Sec. 23, E½NE¼;
Sec. 24, NW¼NW¼.

*Bluewater Lookout*

T. 18 S., R. 14 E.,
Sec. 13, NE¼NW¼SW¼,NW¼NE¼SW¼.

4. *NM NM 023844—Public land Order No. 1663*

*Cloudcroft Recreation Area*

*(formerly Unit A of Cloudcroft Experimental Forest)*

T. 15 S., R. 12 E.,
Sec. 25, S½SE¼;
Sec. 36, All.

*Haynes Canyon Research Natural Area*

*(formerly Unit B of Cloudcroft Experimental Forest)*

T. 16 S., R. 11 E.,
Sec. 1, S½SE¼;
Sec. 12.
T. 16 S., R. 12 E.,
Sec. 7, lot 4.

5. *NM NM 0220340—Public Land Order No. 2798*

*Cloudcroft Road (State No. 83)*

*Highway Roadside Zone*

A strip of land 500 feet on each side of the centerline of U.S. 82 through the following legal subdivisions:

T. 15 S., R. 13 E.,
Sec. 31, lot 4, S½SE¼;
Sec. 32, SW¼SE¼, SE¼SW¼.
T. 16 S., R. 12 E.,
Sec. 3, lot 1, 2, 4, 8;
Sec. 4, lots 1–6, inclusive, 8, 12;
Sec. 5, lot 1, SE¼ of lot 7, 8, 33.

6. *NM NM 1411—Public Land Order No. 4424*

*Sleepy Grass Recreation Area*

*(formerly Sleepy Grass Picnic Ground)*

T. 16 S., R. 12 E.,
Sec. 4, lot 7, W½ of lot 10, SE¼ of lot 14, W½ of lot 15, NW¼ of lot 18, lot 19, SE¼ of lot 20, lot 21, NW¼ of lot 22;
Sec. 5, S½ of lot 22, S½ of lot 23, S½ of lot 24, N½NE¼SW¼, N½NE¼SE¼, and N½NW¼SE¼.

7. *NM NM 0556981—Public Land Order No. 4643*

*Ski Cloudcroft Winter Sports Area*

T. 16 S., R. 12 E.,
Sec. 3, lot 20;
Sec. 4, lot 17.

The areas described aggregate 2,670.27 acres in Otero County.

The withdrawals are essential for protection of substantial capital improvements on these sites. The withdrawals currently segregate the lands from operation of the mining laws, but not the mineral leasing laws, and some of the lands are closed to operation of the public land laws generally. The Forest service requests no changes in the purpose or segregative effect of the withdrawals except that the lands will be opened to operation of the public land laws generally where they are presently closed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: July 7, 1988.

**Monte G. Jordan,**

*State Director, Associate.*

[FR Doc. 88–16163 Filed 7–18–88; 8:45 am]

BILLING CODE 4310–FB–M

## Minerals Management Service

### Environmental Documents Prepared for Proposed Oil and Gas Operations on The Alaska Outer Continental Shelf

**AGENCY:** Minerals Management Service (MS), U.S. Department of the Interior.

**ACTION:** Notice of the availability of environmental documents prepared for outer continental shelf (OCS) minerals exploration proposals on the Alaska OCS.

**SUMMARY:** The MMS, in accordance with Federal rgulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Environmental Assessments (EA's) and Findings of No Significant Impact (FONSI's) prepared by the MMS for oil and gas exploration activities proposed on the Alaska OCS. This listing includes all proposals for which FONSI's were prepared by the Alaska OCS in the 3-month period preceding this notice.

### Proposal

Amoco requests to drill one exploratory well from either the Kulluk or the Explorer II on either lease OCS–Y 0917, 0918, or 0926 during the 1988 open-water period in the Eastern Alaskan Beaufort Sea. In addition, Amoco requests the waiver of Sale 87 Stipulation No. 4, thc Seasonal Drilling Restriction, effective for 1988 and subsequent years. It has been MMS policy to provide only a one year modification to the Seasonal Drilling Restriction. The EA assesses waiving the Seasonal Drilling Stipulation for only the 1988 drilling season. Should drilling be permitted during the fall bowhead whale migration, Amoco will monitor the migration using the National Marine Fisheries Service approved Wartzok and Watkins study. Amoco will continue to support a 1986 agreement with the Alaska Eskimo Whaling Commisison to help minimize potential conflicts between subsistence activities and drilling activities.

### Location

| Lease | Block(s) |
|---|---|
| OCS–Y: | |
| 0917 | NR 7-3 724 |
| 0918 | 725 |
| 0926 | 769 |

### Environmental Assessment

EA No. AK 88–02.

### FONSI Date

May 25, 1988.

**FOR FURTHER INFORMATION:** Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS are encouraged to contact the MMS office in the Alaska OCS Region.

The FONSI and associated EA are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, phone: (907) 261–4435.

**SUPPLEMENTARY INFORMATION:** The MMS prepares EA's and FONSI's for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA is used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA.

This Notice constitutes the public notice of Availability of environmental

documents required under the NEPA regulations.

Dated: July 8, 1988.

**Alan D. Powers,**

*Regional Director, Alaska OCS Region.*

[FR Doc. 88-16164 Filed 7-18-88; 8:45 am]

BILLING CODE 4310-MR-M

## Development Operations Coordination Document; Chevron U.S.A. Inc.

**AGENCY:** Minerals Mangement Service, Interior.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. Inc., Unit Operator of the South Bay Marchand Federal Unit Agreement No. 14-08-001-3915, has submitted a DOCD describing the activities it proposes to conduct on the South Bay Marchand Federal unit. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Leeville, Louisiana.

**DATE:** The subject DOCD was deemed submitted on June 30, 1988.

**ADDRESS:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8:00 a.m. to 4:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Mr. Mike Nixdorff; Minerals Management Service; Gulf of Mexico OCS Region; Production and Development; Development and Unitization Section; Unitization Unit; Telephone (504) 736-2660.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Services makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: July 8, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-16166 Filed 7-18-88; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

## National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 9, 1988. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submited by August 3, 1988.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**GEORGIA**

**De Kalb County**

Briarcliff, 1260 Briarcliff Rd., NE, Atlanta, 88001167

**Fulton County**

Southern Belting Company Building, 236 Forsyth St., SW, Atlanta, 88001174

**IOWA**

**Lyon County**

Big Sioux Prehistoric Prairie Procurement System Archaeological District (Big Sioux Prehistoric Prairie Procurement System MPS), Address Restricted, Klondike vicinity, 88001169

**Polk County**

Civic Center Historic District (The City Beautiful Movement and City Planning in Des Moines, Iowa (1892—1938 MPS)), Des Moines River, Center St. Dam to Scott Ave. Dam, including both banks, Des Moines, 88001168

**KANSAS**

**Greenwood County**

Eureka Carnegie Library (Carnegie Libraries of Kansas TR), 520 N. Main, Eureka, 88001170

**Morris County**

Cottage House Hotel, 25 N. Neosho, Council Grove, 88001172

**Saline County**

Fox—Watson Theater Building, 155 S. Santa Fe Ave., Saline, 88001171

**MASSACHUSETTS**

**Essex County**

Ten Pound Island Light (Lighthouses of Massachusetts TR), Gloucester Harbor, Gloucester, 88001179

**MINNESOTA**

**Brown County**

Nora Free Christian Church, NM 257, Hanska vicinity, 88001176

**MISSOURI**

**St. Louis Independent City**

Stockton, Robert Henry, House, 3508 Samuel Shepard Dr., St. Louis, 88001177

**NEW MEXICO**

**Eddy County**

Caverns, The, Historic District, End of NM 7, Carlsbad vicinity, 88001173

**NORTH CAROLINA**

**Orange County**

Faucett Mill and House, Faucette Mill Rd. on the E side of Eno River, Hillsborough vicinity, 88001175

**UTAH**

**Grand County**

Julien Inscription Panel (Arches National Park MRA), Dark Angel vicinity, Moab vicinity, 88001184

Old Spanish Trail (Arches National Park MRA), Visitor Center vicinity, Moab vicinity, 88001181

Ringhoffer Inscription (Arches National Park MRA), Tower Arch, Moab vicinity, 88001185

Rock House—Custodian's Residence (Arches National Park MRA), Visitor Center vicinity, Moab vicinity, 88001186

**San Juan County**

Cave Springs Corral (Canyonlands National Park, MRA), Cave Springs, Moab vicinity, 88001188

Cowboy Cave (Canyonlands National Park MRA), Cave Springs vicinity, Moab vicinity, 88001187

D.C.C.&P. Inscription B (Canyonlands National Park MRA), Confluence vicinity, Moab vicinity, 88001198

Julien Inscription (Canyonlands National Park MRA), Lower Red Lake vicinity, Moab vicinity, 88001196

Kirk's Cabin (Canyonlands National Park MRA), Upper Salt Creek Canyon, Moab vicinity, 88001192

Kirk's Corral (Canyonlands National Park MRA), Upper Salt Creek, Moab vicinity, 88001193

Kirk's Fence (Canyonlands National Park MRA), Upper Salt Creek Canyon, Moab vicinity, 88001194

Kirk's Second Corral (Canyonlands National Park MRA), Upper Salt Wash, Moab vicinity, 88001195

Kolb Inscription (Canyonlands National Park MRA), Big Drop #2 vicinity, Moab vicinity, 88001197

Lathrop Canyon Mine A (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001199
Lathrop Canyon Mine B (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001200
Lathrop Canyon Mine C (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001201
Lathrop Canyon Mine D (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001202
Lathrop Canyon Mine E (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001206
Lathrop Canyon Mine F (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001208
Lathrop Canyon Mine G (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001209
Lathrop Canyon Mine H (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001210
Lathrop Canyon Mine I (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001211
Lathrop Canyon Mine J (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001212
Lathrop Canyon Uranium Roads (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001205
Lost Canyon Cowboy Camp (Canyonlands National Park MRA), Lost Canyon vicinity, Moab vicinity, 88001191
Mine Lane (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001213
Murphy Trail (Canyonlands National Park MRA), Murphy Point vicinity, Moab vicinity, 88001189
Murphy Trail Bridge (Canyonlands National Park MRA), Murphy Trail, Moab vicinity, 88001190
Owachomo Bridge Trail, Armstrong Canyon, Blanding vicinity, 88001166
Rainy Day Shelter—Lathrop (Canyonlands National Park MRA), Lathrop Canyon, Moab vicinity, 88001204

[FR Doc. 88-16217 Filed 7-18-88; 8:45 am]
BILLING CODE 4310-70-M

## DEPARTMENT OF JUSTICE

### Information Collection(s) Under Review

July 12, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) the title of the form or collection; (2) the agency form number, if any and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of estimated time it takes each respondent to respond; (6) an estimate of the total public burden hours associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. Law 96-511 applies.

Comments and/or questions regarding the item(s) contained in this notice, especially regarding the estimated response time, should be directed to the OMB reviewer, Mr. Sam Fairchild, on (202) 395-7340 AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse who can be reached on (202) 633-4312.

**Extension of the Expiration Date of a Currently Approved Collection Without Any change in the Substance or in the Method of Collection**

(1) Categorical Assistance Progress Report.
(2) OJP Form 4587/1, Office of the Comptroller, Office of Justice Programs, Department of Justice.
(3) Quarterly, with final report.
(4) State or local governments, businesses or other for-profit, non-profit institutions. OMB Circulars A-102 and A-110 require grant recipients to submit performance reports to the grantor agency. This form is used to satisfy this requirement.
(5) 4,000 respondents at 2 hours each,
(6) 8,000 estimated annual public burden hours.
(7) Not applicable under 3504(h).

**Reinstatement of a Previously Approved Collection For Which Approval Has Expired**

(1) Department of Justice Federal Coal Lease Review Information.
(2) ATR-139, ATR-140. Antitrust Division, Department of Justice.
(3) On occasion.
(4) Businesses or other for-profit. The information collected from prospective Federal coal leasees will be used in the Department's review of the competitive effects of Federal coal lease issuances, transfers, and exchanges.
(5) 25 respondents at 2 hours each.
(6) 50 estimated annual burden hours.
(7) Not applicable under 3504(h).

**Larry E. Miesse,**
*Department Clearance Officer, Department of Justice.*

[FR Doc. 88-16122 Filed 7-18-88; 8:45 am]
BILLING CODE 4410-18-M

### Lodging of Consent Decree Pursuant to the Clear Water Act and the Rivers and Harbors Act of 1899; United States v. Ashland Oil Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 6, 1988, a proposed Consent Decree in *United States* v. *Ashland Oil Company*, Civil No. 88-1487, was lodged with the United States District Court for the Western District of Pennsylvania. The proposed Consent Decree arises from a civil action filed simultaneously with the proposed Decree under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Rivers and Harbors Act of 1899, 33 U.S.C. 407, concerning a spill of approximately 3.7 million gallons of diesel fuel from Ashland Oil Company's oil marketing facility in Floreffe, Pennsylvania into and adjacent to the Monongahela River on January 2, 1988. The Consent Decree requires Ashland to conduct soil and groundwater remediation on its facility to clean-up the remaining oil and certain hazardous substances, to perform river water and river bank monitoring and clean-up if necessary, to reimburse the government's costs incurred in responding to the spill, and to perform several other environmental compliance requirements aimed at controlling pollution or the threat of pollution at the facility. The decree reserves the rights of the government to seek civil and criminal penalties, natural resource damages, and further injunctive relief as may be necessary.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and shoulder refer to *United States* v. *Ashland Oil Co.*, DJ Ref. 90-5-1-1-3082.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Pennsylvania, 633 U.S. Post Office & Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania, and at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107. Copies of the Consent Decree may be

examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of $5.60 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-16170 Filed 7-18-88; 8:45 am]

BILLING CODE 4410-01-M

## Consent Judgement; Lea County Electric Cooperative, Inc., et al.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on July 5, 1988, a proposed Consent Decree in *United States* v. *Lea County Electric Cooperative, Inc., Hatch & Kirk, Inc., George and Rose Bailes, individually and doing business as RGW Enterprises, Inc.*, Civil Action Number 87-1486C, was lodged with the United States District Court for the District of New Mexico. The Complaint filed by the United States on December 12, 1986, alleged violations of the Clean Air Act and the National Emissions Standards for Hazardous Air Pollutants ("NESHAP") for asbestos. Defendant Lea County Electric Cooperative, Inc. ("LCEC") owns and operates an electric generation plant; the other defendants were the owners and operators of a salvage company involved in the removal of asbestos-containing materials from the LCEC plant. Defendants violated the Clean Air Act and the regulations promulgated thereunder by failing to notify the State of New Mexico prior to the commencement of the salvage operation at LCEC's plant in Lovington, New Mexico, and by failing to follow proper procedures for the removal, storage and disposal of the asbestos-containing material.

The Consent Decree provides that each of the defendant parties shall pay a civil penalty of $15,000.00 for a total of $45,000.00. It also contains a general provision requiring compliance with the requirements of the NESHAP for asbestos.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Lea County Cooperative, et al.*, D.J. No. 90-5-2-1-949.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Room 12020, United States Courthouse, 500 Gold Avenue, SW. Albuquerque, New Mexico 87103, at the Region VI office of the Environmental Protection Agency, Office of Regional Counsel, 1445 Ross Avenue, Dallas 75202-2733, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 6314, Ninth Street and Pennsylvania Avenue, NW, Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Lea County Electric Cooperative, et al.*, D.J. No. 90-5-2-1-949.

**Rober J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88-16171 Filed 7-18-88; 8:45 am]

BILLING CODE 4410-01-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Privacy Act of 1974; Transfer of Records

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of transfer of records subject to the Privacy Act to the National Archives.

**SUMMARY:** Records retrievable by personal identifiers which are transferred to the National Archives of the United States are exempt from most provisions of the Privacy Act of 1974 (5 U.S.C. 552a) except for publication of a notice in the **Federal Register.** NARA publishes a quarterly notice of the records newly transferred to the National Archives of the United States which were maintained by the originating agency as a system of records subject to the Privacy Act.

**DATE:** Written comments must be received by August 18, 1988.

**ADDRESS:** Comments should be sent to Adrienne C. Thomas, Director, Program Policy and Evaluation Division (NAA), National Archives and Records Administration, Washington, DC 20408.

**FOR FURTHER INFORMATION CONTACT:** Dr. Trudy Peterson, Assistant Archivist for the National Archives, on (202) 523-3130 or (FTS) 523-3130.

**SUPPLEMENTARY INFORMATION:** In accordance with section (1)(3) of the Privacy Act, archival records transferred from Executive Branch agencies to the National Archives of the United States are not subject to the provisions of the Act relating to access, disclosure, and amendment. The Privacy Act does require that a notice appear in the **Federal Register** when records are transferred to the National Archives of the United States. The records of the United States Congress and all United States Courts are exempt from all provisions of the Privacy Act. Consequently, when records retrievable by personal identifiers are transferred from the Congress or the Courts to the National Archives of the United States, the notice in the **Federal Register** does not include these records.

After transfer of records retrievable by personal identifiers from executive branch agencies to the National Archives of the United States, NARA does not maintain these records as a separate system of records. NARA will attempt to locate specific records about the individual. Records in the National Archives of the United States may not be amended, and NARA will not consider any requests for amendment.

Archival records maintained by NARA are arranged by Record Group depending on the agency of origin. Within each Record Group, the records are arranged by series, thereunder generally by filing unit, and thereunder by document or groups of documents. The arrangement at the series level or below is generally the one used by the originating agency. Usually, a system of records corresponds to a series, and this notice uses the series title as the title of the system of records.

The following systems of records retrievable by personal identifiers have been transferred to the National Archives:

1. *System name:* National Archives Record Group 59, General Records of the Department of State, Records of the Board of Examiners, Tabulations of Consular Examinations and Scores of Candidates.

*System Location:* National Archives Building, 8th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Categories of individuals covered by the system:* Consular Service officers.

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:* Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

*Categories of records in the system:* Forms on which are recorded the grades of each candidate on each part of a given examination for the consular service, 1902–1924.

*Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

a. Storage: Paper records stored in boxes.

b. Retrievability: Scores are arranged alphabetically by name.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

*System manager and address:* The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue, NW, Washington, DC, 20408.

*Notification Procedures:* Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:* Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

2. *System name:* National Archives Record Group 59, General Records of the Department of State, Records of the Board of Examiners, Reports of Individual Grades on Diplomatic Examinations.

*System location:* National Archives Building, 8th and Pennsylvania Avenue, NW, Washington, DC 20408.

*Categories of individuals covered by the system:* Diplomatic Service officers.

*Routine uses of records maintained in the system, including categories of users and the purpose of such uses:* Reference by Government officials, scholars, students, and members of the general public. The records in the National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a(1)(3). Further information about uses and restrictions may be found in 36 CFR Part 1256 and in the General Notice published by the National Archives and Records Administration in 40 FR 45786 (October 2, 1975).

*Categories of records in the system:* Forms giving the name of each candidate for the diplomatic service, his grade on the various parts of the examination, and pertinent information on his eligibility for appointment, 1906–1923. *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:*

a. Storage: Paper records stored in boxes.

b. Retrievability: Arranged chronologically and thereunder alphabetically by surname.

c. Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives.

d. Retention and disposal: Records are retained permanently.

*System manager and address:* The system manager is the Assistant Archivist for the National Archives, National Archives and Records Administration, 8th and Pennsylvania Avenue, NW, Washington, DC, 20408.

*Notification Procedures:* Individuals desiring information from or about these records should direct inquiries to the system manager.

*Records access procedures:* Upon request, the National Archives will attempt to locate specific records about individuals and will make the records available subject to the restrictions set forth in 36 CFR Part 1256. Enough information must be provided to permit the National Archives to locate the records in a reasonable amount of time. Records in the National Archives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the *Guide to the National Archives of the United States,* which is sold by the Superintendent of Public Documents, Government Printing Office, Washington, DC 20402, and may be consulted at the National Archives research facilities listed in 36 CFR Part 1253.

Dated: July 12, 1988.

**Don W. Wilson,**

*Archivist of the United States.*

[FR Doc. 88–16206 Filed 7–18–88; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Council on the Humanities; Meeting

July 11, 1988.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on August 11–12, 1988.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Postoffice Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on August 11–12, 1988, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on August 11, 1988, will be as follows:

**Committee Meetings**

8:30-9:30 a.m.: Coffee for Council Members—Room 527 (Open to the Public)

9:30-10:30 a.m.: Committee Meetings—Policy Discussion

Education Programs—Room M-14

Fellowship Programs—Room 316-2

General Programs—Room 415

Research Programs/Preservation Grants Programs—Room 315

State Programs/Challenge Grants—Room M-07

10:30 a.m. until Adjourned—(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on August 12, 1988, will convene at 9:00 a.m., in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending the meeting will be served from 8:30-9:00 a.m.)

Minutes of the Previous Meeting Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Application Report and Matching Report

E. Status of Fiscal Year 1988 Funds

F. Status of Fiscal Year 1989 Appropriation Request

G. Committee Reports on Policy and General Matters

1. Education Programs
2. Fellowship Programs
3. General Programs
4. Research Programs
5. Preservation Grants
6. State Programs
7. Challenge Grants
8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of future budget requests and specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 786-0322.

**Stephen J. McCleary,**

*Advisory Committee Management Officer.*

[FR Doc. 88-16216 Filed 7-18-88; 8:45 am]

BILLING CODE 7536-01-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-440]**

### The Cleveland Electric Illuminating Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58 issued to The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the Environmental Protection Plan in Appendix B of the Technical Specifications (TS) relating to the surveillance requirements for the monitoring of *Corbicula*. The principal change is a shift in the sampling area from the off-shore lake bottom adjacent to the Perry intake and discharge structures to sampling of sediments in the Perry raw water systems. The sampling procedures at the Eastlake Power Plant to detect the presence of *Corbicula* are also revised to use a hand dredge in lieu of SCUBA divers and suction devices.

The proposed action is in accordance with the licensees' application for amendment dated October 2, 1987.

*The Need for the Proposed Action*

The proposed change to the TS is required in order to take advantage of research conducted within the last few years which should improve the detection capability for the presence of *Corbicula* over that which currently exists.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revision to Technical Specifications. The proposed revision would provide a more effective and direct method for detecting the presence of *Corbicula*. This would reduce the likelihood of blockage of the Emergency Service Water System due to growth of water-borne organisms. Therefore, the proposed change does not increase the probability or consequences of accidents. No changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed change to the TS involves a change in sampling location from offshore lake bottom to a location within the restricted area as defined in 10 CFR Part 20. This would have less nonradiological impact than the current program. Additionally, use of a hand dredge instead of SCUBA divers with suction devices is proposed at the Eastlake Plant sampling location. The size of the hand dredge is small and the sampling frequency (semi-annually) is such that any additional impacts resulting from this change are considered very minor. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Determination in connection with this action was published in the **Federal Register** on March 9, 1988 (53 FR 7604). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Action*

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in a less effective *Corbicula* monitoring program than proposed.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Perry Nuclear Power Plant, Units 1 and 2, dated August 1982.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensees' request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact

statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 2, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 8 day of July 1988.

For the Nuclear Regulatory Commission.

**Kenneth E. Perkins,**

*Director, Project Directorate III-3, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 88-16198 Filed 7-18-88; 8:45 am]

BILLING CODE 7590-01-M

## NUREG-1296, Thermal Overload Protection for Electric Motors on Safety-Related, Motor-Operated Valves-Generic Issue II.E.6.1; Availability of

The Nuclear Regulatory Commission has published a report that describes the thermal overload protection devices for safety-related motor-operated valve operators along with current and previous NRC guidance for the use of overload protection. It is recommended that uniform acceptable practices for the overload protection of valve motor operators be developed in the form of a standard or guidance document for the industry by cognizant standards developing organizations.

Copies of NUREG-1296 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 1717 H St., NW., Washington, DC.

Dated at Washington, DC, this 21st day of June 1988.

For the Nuclear Regulatory Commission.

**Guy A. Arlotto,**

*Director, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 88-16196 Filed 7-18-88; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-25906; File No. SR-CBOE-87-46]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

On October 5, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to set forth guidelines for trading halts in equity options at the Exchange under varying circumstances.

The proposed rule change was noticed in Securities Exchange Act Release No. 25063 (October 26, 1987), 52 FR 42165 (November 3, 1987). No comments were received on the proposed rule change.

The CBOE states that the purpose of the proposed rule change is to provide members with a circular on the Exchange's existing trading halt policy for options on individual securities as well as additional guidelines for trading halts. The authority for trading halts is derived from CBOE Rule 6.3. Rule 6.3 provides any two Floor Officials with the authority to halt trading in any option contract, in the interests of a fair and orderly market, for a period not in excess of two consecutive business days. The rule currently states that, when determining whether a trading halt is necessary, Floor Officials may consider the following factors: (i) Trading in the underlying security has been halted or suspended in the primary market; (ii) the opening of such underlying security in the primary market has been delayed because of unusual circumstances; or (iii) other unusual conditions or circumstances are present. In addition, Rule 6.3 provides that trading in an option contract which is the subject of a trading halt may be resumed when the conditions which led to the halt are no longer present, or when the interests of a fair and orderly market are best served by a resumption of trading.

The proposed rule change provides additional specificity to rule 6.3 by describing seven situations which may require trading halts. The seven situations are: (1) There is no last sale and/or quotation dissemination either by the Exchange or by the Options Price Reporting Authority ("OPRA"); [3] (2) the primary market trading in one or more stocks for regulatory reasons; (3) there is a primary market nonregulatory trading halt in one or more individual equity securities; (4) the primary market halts trading floor-wide; (5) the primary market is open but is unable to disseminate last sale or quotation information; (6) there is an over-the-counter quote dissemination halt; and (7) the dissemination of news, after the close of trading in the primary market, which causes the Exchange to believe that trading in options should be halted.

The proposed rule change also describes the procedures by which CBOE officials would determine whether a halt is warranted in each of the seven situations. For example, in situations three and four above, there are provisions for resuming trading in the affected options if trading activity in the underlying security other than on the primary market is sufficient to support options trading. Finally, the proposed rule change expresses the CBOE's preference that if any of the seven situations occurs on an expiration Friday, that trading in the affected option be allowed to continue.

The proposal notes that particular circumstances require the exercise of judgment and discretion, so that the Exchange's policy can only provide guidelines for trading halts. The CBOE's proposal reflects the Exchange's view that, so long as viable trading in the underlying security exists, options market participants should not be disabled from trading options. Moreover, the policy acknowledges the Exchange's overriding preference to allow market participants to trade options on expiration Friday, since this is the last opportunity to trade out of a

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] Failures of dissemination of option last sale or quotation information could be manifested by a failure of either the last sale or quotation data stream, and the failure could be floor-wide or it might affect only a sector of the trading floor. The Exchange's policy provides that trading in affected securities would be halted upon establishing that the dissemination problem will not be cured within 15 minutes. Because a dissemination failure likely would result in the affected display information becoming stale, the Exchange would notify both member firm floor representatives and news wire services of the problem, in order to alert market participants that the markets may differ materially from the stale information. Trading would resume 15 minutes after notification to the news wire services if the Exchange believes that fair and orderly markets can be maintained. The Exchange believes that, ordinarily, the public is better served by being allowed to trade options in less-than-ideal dissemination conditions when the underlying securities markets are open for business. Letter from Frederic M. Krieger, Associate General Counsel, CBOE, to Howard Kramer, Assistant Director, Commission, dated April 22, 1988.

position prior to expiration. In addition, the Exchange's trading halt policy provides that action be taken to notify market participants of resumption of trading after a halt. For example, where trading in individual equity options has been halted because the primary market has halted trading floor-wide, if two floor officials and a senior Exchange staff official determine that sufficient markets will support trading other than at the primary exchange, the Exchange will resume trading one hour after notification to the news wire services.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,[4] and the rules and regulations thereunder. The Commission finds that the proposal will enhance market efficiency by providing a clearer description of the Exchange's existing trading halt policy for options on individual equity securities. The proposal was submitted by the CBOE after consultation with representatives from the other options exchanges, and reflects efforts by the CBOE to develop a uniform trading halt policy. The proposed rule change would be particularly helpful during times of high volatility, such as during the October 1987 market break. During the week of October 19, 1987, trading in securities underlying CBOE options had halted on the primary exchange. While this resulted in trading halts in the overlying options, additional clarity as to the conditions requiring an option trading halt would have reduced confusion for market participants. The proposed rule change should help provide this clarity.[5]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Dated: July 13, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-16230 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78f (1982).

[5] In approving this policy change, which antedates the events of last October, the Commission does not intend to suggest that further efforts to coordinate intermarket information sharing or trading halt policies are unnecessary. Rather, the Commission believes that even if further steps are necessary, this policy statement provides additional useful clarity.

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1987).

**[Release No. 34-25900; File No. SR-MSTC-88-03]**

## Self-Regulatory Organizations; Midwest Securities Trust Co.; Order Approving Proposed Rule Change

The Midwest Securities Trust Company ("MSTC") on February 23, 1988, submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"). The proposal would terminate one of MSTC's current securities withdrawal procedures. Notice of the proposal appeared in the **Federal Register** on February 23, 1988, to solicit public comment.[1]

No comments were received. This order approves the proposed rule change.

*1. Description of the Proposal*

The proposal would amend Rule 1, Section 2(a) of Articvle II (Settlement Services) of the MSTC Rules to discontinue the service known as "demand street requests." By related conforming changes, the term "demand street requests" would be excised from all of MSTC's Rules.

An MSTC "demand street request," also known as a "demand street withdrawal request," is a request by a participant to MSTC for the withdrawal of street-name securities from MSTC's system and for their physical delivery or pick-up. MSTC currently processes such requests ahead of the more routine "street withdrawal requests" but at a higher charge to its participants.[2]

MSTC states that recent improvements to its electronic systems have expedited the processing of routine withdrawal requests. MSTC states that, consequently, the volume of requests for demand street requests, at their premium prices, has diminished significantly.

MSTC states that it proposes to terminate "demand street requests" because, in its business judgment, the declining use of that service does not justify the inefficiencies of continuing two parallel services that provide essentially the same product. MSTC believes that the proposal is consistent with section 17A of the Act in that the proposal would provide MSTC with uniform security withdrawal procedures that would improve both cost effectiveness and the safeguarding of securities in the custody or control of MSTC.

*3. Discussion*

The Commission believes that this proposal is consistent with the Act, particularly section 17A of the Act. MSTC has reported that, due to systems enhancements, its participants have shown significantly reduced interest in using the more expensive withdrawal procedure that this proposal would eliminate. Moreover, MSTC has represented that a uniform system for its participants', withdrawal of street name securities would be more efficient in terms of: (1) Cost effectiveness, and (2) custodial techniques for safeguarding securities. Accordingly, the Commission believes that the proposal is designed to facilitate more efficient and safer procedures for the prompt and accurate clearance and settlement of transactions in securities.

*4. Conclusion*

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b) of the Act, that the above-mentioned proposed rule change (SR-MSTC-88-03) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: July 12, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-16223 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

[1] *See* Securities Exchange Act Release No. 25355 (February 17, 1988), 53 FR 5336.

[2] Although both types of street withdrawals involve certificates registered in MSTC's nominee name, the "demand" request generally resulted in the participant receiving a certificate within 2 to 4 hours for a fee of $15, whereas routine street withdrawals generally were made available within 4 to 6 hours for a fee of $8. Currently, all withdrawals are processed on a "first-come, first-served" basis, ordinarily within 2 to 4 hours. Conversation between Jeffrey E. Lewis, Associate Counsel, MSTC, and Thomas C. Etter, Attorney, Commission, April 19 and 22, 1988.

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

July 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Burlington Resources, Inc.

Common Stock, $.01 Par Value (File

No. 7-3604)
Chaparral Steel Company
Common Stock, $.10 Par Value (File No. 7-3605)
American Realty Trust, Inc.
Common Stock, $1.00 Par Value (File No. 7-3606)
Banco Central, S.A.
American Depositary Shares, No Par Value (File No. 7-3607)
SCECorp (Holding Company)
Common Stock, No Par Value (File No. 7-3608)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1988, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extension of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-16226 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25904; File No. SR-PSE-88-10]**

## Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. That Would Allow Members To Give Pre-Opening Option Market Quote Indications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on May 31, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule VI, Section 36 by adding Commentary .02 which allows members to give pre-opening market indications in order to decrease the time required to complete opening rotations. In addition, the Exchange will add Options Floor Procedure Advice C-2 which sets out the procedures to be followed in order to implement the provisions of Commentary .02. (Brackets indicate language to be deleted; italics indicate new language.)

**Rule VI**

*Trading Rotations*

Sec. 36, Commentary .01 a, b, and c, no change.

*Commentary .02*

*For those option classes and within such time periods as the Options Floor Trading Committee may designate, members may, prior to opening rotation, enter option market quote indications based upon the anticipated opening price of the securities underlying such designated option class.*

*Options Floor Procedure Advice C-2*

*Subject: Pre-Opening Option Market Quote Indication Procedure*

*The following procedures shall be followed by the Order Book Official at each post when posting pre-opening option market quote indications.*

*1. For those options classes designated by the Options Floor Trading Committee as eligible for pre-opening option market quote indications procedures the OBO shall, no earlier than 6:15 a.m. (PT), request market quote indications from the members present in the trading crowd.*

*2. The Members may then provide pre-opening option market quote indications at which time the OBO shall post these quotations. Upon the opening of the underlying stock and no case earlier than 6:30 a.m. (PT) the OBO shall request verbal confirmation from the trading crowd that such pre-opening option market quote indications reflect the actual market and constitute valid opening quotations. If the crowd indicates that such pre-opening option market quote indications reflect the actual market and constitute valid opening quotations, the OBO shall conduct a one-price opening in accordance with applicable Exchange Rules for all series in which floor brokers in the crowd or the Book hold executable limit or market orders. After such orders have been executed, the OBO shall note the time and declare the class open.*

*3. Notwithstanding paragraphs 1 and 2 of this Advice, the OBO may direct that an opening rotation take place pursuant to Rule VI, Section 36(a) if a) the OBO fails to receive market quote indications; or b) the underlying security opens substantially higher or lower than the opening price anticipated by the members of the crowd providing the pre-opening market quote indications; or c) there are substantial order imbalances affecting the options class or; d) for such other reasons as the Options Floor Trading Committee the OBO or the Exchange may determine.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statments may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

The purpose of these amendments is to decrease the amount of time required to obtain opening market quotations during opening rotation. Under certain market conditions, such as the conditions that occurred during the October 1987 market break, it may take up to 45 minutes to obtain opening market quotations for all series of all classes of options traded in a particular pit.[1]

Under the proposed Rule, members of a crowd wherein a designated option class is traded would have the opportunity, before 6:30 a.m. (PT), to provide pre-opening option market quote indications based upon the anticipated opening price of the underlying security. Then, if after the underlying has opened, and in no case earlier than 6:30 a.m. (PT), members confirm the pre-opening option market quote indications, a one price opening would take place pursuant to applicable Exchange Rules. If the pre-opening

[1] Telephone conversation between T. Glen Stanton, Staff Attorney, PSE, and Mary Revell, Attorney, Commission, July 12, 1988.

option market quote indications are not confirmed, the OBO would conduct a regular opening rotation in that class pursuant to applicable Exchange Rules.

Further, if any unusual conditions exist the OBO would have great flexibility to call for an opening rotation in the class.

Pre-opening option market quote indications would be provided by members for (a) all options classes whose underlying stock is sold over-the-counter and (b) those option classes whose underlying stock shows little market volatility.[2]

The Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Act in that it will remove impediments to and perfect the mechanism of a free and open market by decreasing the amount of time required for opening rotations.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 9, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-16224 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25905; File No. SR-PSE-88-08]**

## Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange, Inc. To Allow the Addition of One or More Series of Option Contracts at a Strike Price Up to 100 Points Above and Below the Current Price of the Financial News Composite Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 30, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The PSE proposes to amend Rule XXI, Section 8 by adding Commentary .01 which allows adding one or more series of option contracts at a strike price up to 100 points above and below the current index price of the Financial News Composite Index ("FNCI").

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the Self-Regulatory Organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Staturory Basis for Proposed Rule Change*

The proposed rule change allows the Exchange to open for trading options at a strike price up to 100 points above or below the current FNCI price. The Exhange believes that this will enable market participants to have a greater range of trading and hedging opportunities. The FNCI options market has a high degree of institutional activity and these sophisticated market participants believe that they can use a greater range of strike prices than can the typical retail investor.

The Exchange also recognizes that the proposed change will make available far out-of-the-money options, which have a relatively lower possibility of coming into the money before expiration. Accordingly, the Exchange has cautioned its member firms that these options, particularly the far out-of-the-money series, be closely scrutinized by the Exchange as to the suitability and propriety of transactions in these series by retail customers.

The Exchange believes that the proposed rule change is consistent with the provisions of the Act and, in particular, section 6(b)(5) thereof, in that the rule change is intended to increase market liquidity by providing sophisticated market participants with a greater range of options series for trading.

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[2] The following criteria will be applied by the Options Floor Trading Committee ("Committee") to all equity options traded upon the Exchange's option floor in reaching a determination that the option's underlying stock shows little market volatility: (1) The average difference between the closing price and the opening price of the underlying security measured daily over a two-month period must be ¼ point or less; and (2) the average daily volume of options contracts traded on the opening in the class over the same two-month period may not exceed 100 contracts. Once an option class has been designated as eligible for pre-opening procedures, it will remain eligible until the Committee makes a determination that it is no longer eligible. Letter from T. Glen Stanton, Staff Attorney, PSE, to Joseph Furey, Branch Chief, Commission, dated June 20, 1988.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change imposes a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change; or

(B) Institute preceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commision, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by August 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 13, 1988.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 88-16225 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

July 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

American Realty Trust
Shares of Beneficial Interest, $1.00 Par Value (File No. 7-3609)
Continental Graphics Corporation
Common Stock, $1.25 Par Value (File No. 7-3610)
A.T. Cross Company
Common Stock, $1.00 Par Value (File No. 7-3611)
Crown Crafts, Inc.
Common Stock, $1.00 Par Value (File No. 7-3612)
Cyprus Funds, Inc.
Common Stock, $.001 Par Value (File No. 7-3613)
Frequency Electronics, Inc.
Common Stock, $1.00 Par Value (File No. 7-3614)
Healthvest
Shares of Beneficial Interest (File No. 7-3615)
ICH Corporation
$1.75 Convertible Exchangeable Preferred Stock (File No. 7-3616)
McClatchy Newspapers, Inc.
Common Stock, $.01 Par Value (File No. 7-3617)
Michaels Stores, Inc.
Common Stock, $.10 Par Value (File No. 7-3618)
MFS Government Market Income Trust
Common Stock, No Par Value (File No. 7-3619)
MSI Data Corporation
Common Stock, $1.00 Par Value (File No. 7-3620)
New World Entertainment
Common Stock, $.01 Par Value (File No. 7-3621)
Newmark & Lewis, Inc.
Common Stock, $.05 Par Value (File No. 7-3622)
The Olsten Corporation
Common Stock, $.10 Par Value (File No. 7-3623)
Ply-Gem Industries, Inc.
Common Stock, $.25 Par Value (File No. 7-3624)
Porta Systems Corporation
Common Stock, $.01 Par Value (File No. 7-3625)
Ransbury Corporation
Common Stock, $.15 Par Value (File No. 7-3626)
Taiwan Fund, Inc.
Common Stock, $1.00 Par Value (File No. 7-3627)
Tejon Ranch Company
Common Stock, $1.00 Par Value (File No. 7-3628)
Thermedics, Inc.
Common Stock, $.10 Par Value (File No. 7-3629)
The Timberland Company
Class A Common Stock, $.01 Par Value (File No. 7-3630)
Trinity Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7-3631)
The Washington Post Company
Class B Common Stock, $1.00 Par Value (File No. 7-3632)
Advanced Micro Devices, Inc.
Depositary Convertible Exchangeable Preference Shares (File No. 7-3633)
Arkla, Inc.
$3.00 Convertible Exchangeable Preferred Stock, Series A (File No. 7-3634)
Arrow Electronics, Inc.
Depository Convertible Exchangeable Preference Shares (File No. 7-3635)
Hasbro, Inc.
8% Convertible Preferred Stock (File No. 7-3636)
Lomas & Nettleton Mortgage Investors
Warrants expiring March 1, 1990 (File No. 7-3637)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

'onathan G. Katz,

*Secretary.*

[FR Doc. 88-16228 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-25896; File No. SR-PSE-88-07]**

## Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Arbitration Procedures and Filing Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 3, 1988, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Exchange Rule XII, which pertains to rules for arbitration. Section 2 of Rule XII currently provides that claims of less than $5,000 may be decided by a single arbitrator pursuant to expedited and simplified arbitration procedures. The proposed amendment would increase the limit on the size of claims for which the simplified arbitration procedures are available from $5,000 to $10,000, in order to increase substantially the number of cases processed under that provision; and would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

Section 2(d) provides that, in a simplified arbitration, if a counterclaim exceeding $10,000 is filed, the arbitrator may refer the claim, counterclaim, and/or third party claim, if any, to a panel of three or five arbitrators. The proposed amendment to section 2(d) would provide that the Director of Arbitration could refer the claim to a panel of a maximum of three arbitrators.

Section 8(a)(1) of Rule XII currently provides that in all matters involving public customers where the claim does not exceed $500,000, or where the claim does not involve or disclose a monetary claim, the Director of Arbitration shall appoint a panel of no fewer than three, nor more than five arbitrators.

Section 8(a)(2) currently provides that in all matters involving public customers where the claim is $500,000 or more, a panel of five arbitrators is required, unless the parties agree to have three arbitrators.

In order to alleviate administrative delays and costs frequently encountered in such cases, the proposed rule would eliminate the requirement of five-member panels, allowing the Director of Arbitration to exercise discretion in appointing panels of no more than three arbitrators in all cases not heard under the simplified arbitration procedures.

The proposed rule amending section 31(a), (c) and (d) of Rule XII would provide for an increase in the deposit for claims exceeding $500,000, would provide that the maximum deposit for non-monetary claims be increased from $750 to $1,000, and would provide that the administrative fee retained in an arbitration case which is settled or withdrawn prior to the first hearing session to be increased from $25 to $100.

Section 31(a) would also be amended to provide for a nonrefundable filing fee to be imposed on all member firms for each Submission Agreement filed against a non-member.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change*

A Uniform Arbitration Code (the "Uniform Code") has been developed by the Securities Industry Conference on Arbitration ("SICA"), to establish a uniform system of arbitration procedures throughout the securities industry. The proposed rule changes are intended to make Rule XII of PSE consistent with the Uniform Code. In general, the changes are intended to simplify arbitration procedures for claims up to $10,000, to provide for a maximum of three arbitrators in certain matters, to update the filing fees, and to increase the amount retained from the deposit where a matter is settled or withdrawn prior to the first arbitration session.

(1) *Increased limit on claims eligible for simplified arbitration procedures:* Section 2(a) of Rule XII currently provides that claims of less than $5,000 may be decided by a single arbitrator pursuant to expedited and simplified arbitration procedures. The proposed rule change would increase the limit on the size of claims for which the simplified arbitration procedures are available from $5,000 to $10,000 in order to increase substantially the number of cases processed under that section; and would establish a filing fee of $200 in cases where the amount in controversy is more than $5,000 but does not exceed $10,000.

(2) *Modification of composition of arbitration panels:* Section 8(a)(1) of Rule XII currently provides that in all arbitration matters brought by public customers, that do not exceed $500,000, the Director of Arbitration shall appoint a panel of no less than three, nor more than five, arbitrators.

Section 8(a)(2) provides that in all such arbitration matters that exceed $500,000, the Director of Arbitration shall appoint a panel of five arbitrators, unless the parties agree to a panel of three arbitrators.

In order to alleviate administrative delays and minimize the high costs frequently encountered in such matters, the proposed rule would provide for a maximum of three arbitrators in all public customer claims that exceed $10,000.

(3) *Increased deposit for claims over $500,000.* The proposed rule change amending section 31(a) of Rule XII would increase the deposit required for claims over $500,000 from $750 to $1,000. In the case of non-monetary claims, the proposed rule would amend section 31(c) to provide a maximum deposit on $1,000, rather than $750.

(4) *$500 non-refundable filing fee for claims against non-members:* The proposed rule amendment to section 31(a) establishes a non-refundable filing fee of $500 imposed on all member firms for each arbitration Submission Agreement filed with PSE against a non-member. The proposed user-based fee reduces reliance upon general assessments in assisting PSE in recouping a portion of costs incurred in providing its arbitration facilities. The proposed fee would be charged without respect to the merit of the matter filed or submitted the amount at issue, or the disposition. The proposed fee is user-based, with those persons using PSE's services or facilities more often paying proportionately more than those using

the services or facilities less frequently. The proposed fee is equitable in that it will be imposed on all PSE member firms.

(5) *Increased amount of filing fee retained in cases settled or withdrawn before first session:* The proposed rule change amending section 31(d) of Rule XII would provide that the administrative fee retained in an arbitration case which is settled or withdrawn prior to the first hearing session be increased from $25 to $100.

PSE has adopted the proposed rule changes pursuant to section 6(b)(5) of the Act, which requires that PSE's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PSE does not believe that the proposed rule changes impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participating or Others*

PSE has neither solicited nor received comments on the proposed rule changes.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule changes; or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-7 and should be submitted by August 9, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 11, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-16231 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

July 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

CBI Industries, Inc.
Common Stock, $2.50 Par Value (File No. 7-3597)
Commercial Metals Company
Common Stock, $5.00 Par Value (File No. 7-3598)
Hexcel Corporation
Common Stock, No Par Value (File No. 7-3599)
Progressive Corporation
Common Stock, $1.00 Par Value (File No. 7-3600)
Southern New England Telecommunications Corp.
Common Stock, $12.50 Par Value (File No. 7-3601)
Thermo Electron Corporation
Common Stock, $1.00 Par Value (File No. 7-3602)
United Illuminating Company
Common Stock, No Par Value (File No. 7-3603)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 4, 1988, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-16227 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

**[Rel. No. IC-16481; 812-7029]**

## Application; Integrated Medical Venture Partners, L.P., et al.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

*Applicants*: Integrated Medical Venture Partners, L.P. ("MVP 1"), Integrated Medical Venture Partners 2, L.P. (the "Partnership") and Integrated Medical Venture Management 2 (the "Managing General Partner").

*Relevant 1940 Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(19) and 2(a)(3)(D) of the 1940 Act.

*Summary of Application:* Applicants seek an order determining that (i) the Independent General Partners (as hereinafter defined) of the Partnership are not "interested persons" of the Partnership or the Managing General Partner solely by reason of their status as general partners of the Partnership or as independent general partners of Integrated Medical Venture Partners, L.P. ("MVP 1"), (ii) the independent general partners of MVP 1 will not be deemed "interested persons" of MVP 1 solely by virtue of serving as the Independent General Partners of the Partnership, and (iii) persons who become limited partners of the Partnership (the "Limited Partners") who own less than 5% of the units of limited partnership interest (the "Units") of the Partnership will not be "affiliated

persons" of the Partnership or of any general partners thereof.

*Filing Date:* The application was filed on May 10, 1988 and amended on July 1, 1988. A second amendment will be filed during the notice period the substance of which is contained herein.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on August 2, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve the Applicants with the request, personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Applicants, 733 Third Avenue, New York, New York 10017, Attention: Howard S. Wachtler.

**FOR FURTHER INFORMATION CONTACT:** James E. Banks, Staff Attorney (202) 272-2190, or Brion R. Thompson, Branch Chief (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

**Applicants' Representations**

1. The Partnership is a recently formed limited partnership organized under Delaware State law and is governed by an agreement of limited partnership (the "Partnership Agreement"). The Partnership has elected to be a business development company, and, therefore, will be subject to sections 55 through 65 of the 1940 Act and to those sections of the 1940 Act made applicable to business development companies by section 59 thereof. The Partnership will terminate not later than December 31, 1998, unless extended for up to two additional two-year periods.

2. The Partnership filed a registration statement under the Securities Act of 1933 on Form N-2 (File No. 33-21281) with respect to an offering by the Partnership of up to 100,000 Units. Integrated Resources Marketing, Inc., a wholly-owned subsidiary of Integrated Resources, Inc. ("Integrated"), will act as the selling agent for the Units on a "best efforts" basis.

3. The general partners of the Partnership ("General Partners") initially will consist of four Individual General Partners (*i.e.*, partners who are natural persons) and the Managing General Partners. Applicants proposed that the Individual General Partners will be comprised of three Independent General Partners (defined to be individuals who are natural persons and who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the 1940 Act) and one Individual General Partner who is an affiliated person of the Managing General Partner as defined in section 2(a)(3) of the 1940 Act. The General Partners may determine to increase or to decrease the number of persons to serve as Individual General Partners, however, they may not reduce the number of Individual General Partners to less than four persons. If at any time the number of Individual General Partners should for other reasons be less than four, the remaining Partners shall, within 90 days, designate one or more successor Individual General Partners so as to restore the number of Individual General Partners to not less than four. The Partnership Agreement further provides that a majority of such General Partners must be Independent General Partners.

4. The Managing General Partner, a Delaware partnership, will be responsible for purchasing investments for the Partnership which have been approved by the Independent General Partners. The Managing General Partner will also be responsible for providing various management and administrative services necessary for the ongoing operation of the Partnership and for managing the Partnership's short-term money market instruments pursuant to a management agreement with the Partnership. The Managing General Partner is a registered investment adviser under the Investment Advisors Act of 1940 (the "'Advisers Act"). The general partners of the Managing General Partner are Integrated Medical Venture Investments, Inc. ("IMVI"), a wholly-owned subsidiary of Integrated, and BSW, Inc. BSW, Inc. and IMVI also act as general partners of Integrated Medical Venture Management, a Delaware general partnership, which acts as the Managing General Partner of MVP 1.

5. MVP 1, organized in 1987, is regulated under the 1940 Act as a business development company. In addition, MVP 1 is the subject of an earlier exemptive order of the SEC (Investment Company Release No. IC-15881, July 17, 1987), which declares that the Independent General Partners of MVP 1, are not interested persons of MVP 1 solely by reason of their being general partners of MVP 1; and that the limited partners of MVP 1 with power to vote less than five percent of the outstanding shares are not affiliated persons of MVP 1 or any general partner thereof solely by reason of being a limited partners of MVP 1; and which permits the acquisition by MVP 1 from its managing general partner or an affiliate thereof of certain initial venture capital investments.

6. The Individual General Partners solely will manage the Partnership, except in regard to those specific activities of the Partnership for which the Managing General Partner in its capacity as Managing General Partner or as investment adivser will be responsible. The Individual General Partners will provide overall guidance and supervision of Partnership operations and will perform the same functions as directors of the corporation. The Independent General Partners will assume the responsibilities and obligations imposed by the 1940 Act and the regulations thereunder or the disinterested directors of a registered investment company.

6. The Limited Partners have no right to control the Partnership's business, but may exercise certain rights and powers of a Limited Partner under the Patnership Agreement, including voting rights and giving consents and approvals provided for in the Partnership Agreement. Limited Partners will be afforded all voting rights required by the 1940 Act. Applicants will obtain an opinion from the Delaware legal counsel for the Partnership that the existence of these voting rights does not subject the Limited Partners to liability as General Partners under the Delaware Revised Uniform Limited Partnership Act. In addition, the Partnership Agreement obligates the General Partners to take all action which may be necessary or appropriate to protect the limited liability of the Limited Partners. An insurance policy to provide coverage to persons who become Limited Partners in the Partnership has not been obtained. Applicants state, however, that the General Partners will consider the possibility of obtaining errors and omissions insurance for the Partnership. In light of the view of the staff of the SEC that generous insurance coverage is appropriate in view of the special problems of using the limited

partnership form for registered investment companies, the Independent General Partners will review periodically the question of the appropriateness of obtaining an errors and ommisions insurance policy for the Partnership.

**Applicants' Legal Analysis**

1. Applicants request an exemption from the provisions of section 2(a)(19) of the 1940 Act to the extent that the Independent General Partners of the Partnership would otherwise be deemed to be "interested persons" of the Partnership and of the Managing General Partner solely because such Independent General Partners are general partners of the Partnership, and co-partners of any Managing General Partner. The Partnership has been structured so that the Independent General Partners are the functional equivalents of the disinterested directors of an incorporated investment company. Section 2(a)(19) of the 1940 Act excludes from the definition of "interested persons" of an investment company those individuals who would be "interested persons" solely because they are directors of an investment company, but there is no equivalent exemption for partners of an investment company.

2. In addition, the Independent General Partners of the Partnership may be deemed to be "interested persons" of the Partnership by virtue of their service as Independent General Partners of MVP 1, insofar as MVP 1 might be considered to be under "common control" with the Partnership and thus, an affiliated person of the Partnership. Moreover, since MVP 1 might be considered an affiliated person of the Partnership, Applicants also request that the Independent General Partners of MVP 1 not be deemed "interested persons" of MVP 1 solely by virtue of serving as the Independent General Partners of the Partnership. Applicants believe that service as an Independent General Partner of the Partnership and MVP 1, a relationship similar to one in which an individual serves as a director of multiple imvestment companies in the same complex, will be beneficial to the Partnership and MVP 1.

3. Applicants further request an exemption from section 2(a)(3)(D) of the 1940 Act to the extent any Limited Partner owning less than 5% of the Units of the Partnership not be deemed an affiliated person of the Partnership, any other Limited Partner, or any of the General Partners solely by reason of their status as Limited Partners. Since such Limited Partners have no exclusion under the 1940 Act comparable to that provided under sction 2(a)(3) of the 1940 Act to corporate shareholders with less than a 5% ownership interest, the requested relief will place investments in the Partnership on a footing more equal with investments in business development companies organized as corporations.

5. Applicants submit that exemptions from the provisions of sections 2(a)(19) and 2(a)(3)(D) are necessary and appropriate and in the public interest and consistent with the protection of investors and the purpose fairly intended by the policy and provisions of the 1940 Act.

**Applicants' Conditions**

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants agree that the Partnership will be structured so that the Independent General Partners of the Partnership and MVP 1, are the functional equivalents of the non-interested directors of an incorporated investment company registered under the 1940 Act.

2. Under the Partnership Agreement, the Partnership is authorized to make in-kind distributions of portfolio securities to its partners. Applicants agree not to make any in-kind distributions of securities to partners of the Partnership until the Partnership has either obtained a "no-action" letter from the staff of the SEC or, alternatively, has obtained an order pursuant to Section 206A of the Advisers Act permitting such distribution.

3. Applicants will obtain an opinion of counsel satisfactory to the Independent General Partners of the Partnership that the distributions and allocations to the Managing General Partner can be paid in accordance with section 205 of the Advisers Act. Applicants do not request SEC review or approval of such opinion letter.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

July 13, 1988.

[FR Doc. 88-16232 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

## Issuer Delisting; Application to Withdraw from Listing and Registration; (Landmark American Corp. Common Stock, $.01 Par Value) File No. 1-9424

July 13, 1988.

Landmark American Corporation ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company believes that continued auction market trading in its stock on the Amex is inappropriate given the size of its public float and the geographic concentration of its shareholders.

The Company's common stock has been accepted for listing on the National Association of Securities Dealers Automated Quotation System ("NASDAQ"). Trading in the Company's common stock on NASDAQ will commence at the opening of the business on August 9, 1988, and, concurrently therewith, such stock will be suspended from trading on the American Stock Exchange.

Any interested person may, on or before August 3, 1988, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Johnathan G. Katz,**

*Secretary.*

[FR Doc. 88-16229 Filed 7-18-88; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TREASURY

### Customs Service

### Application for Recordation of Trade Name: "J & J America, Inc."

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "J & J America, Inc.," used by J & J America, Inc., a corporation organized under the laws of the state of Florida, located at 11401 SW. 40th Street, Miami, Florida 33165.

The application states that the trade name is used in connection with textiles, textile products, fabrics, ladies handbags, luggage, audio/visual equipment, televisions, video camera recorders, electronic accessories, sporting goods, women's fashion accessories, and costume jewelry, manufactured in Korea.

Before final action is taken on the application, consideration will be given to any relevant data, views, or argument submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

**DATE:** Comments must be received on or before September 19, 1988.

**ADDRESS:** Written comments should be addressed to the Commissioner of Customs, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (Rm. 2104).

**FOR FURTHER INFORMATION CONTACT:** Betty Coombs, Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

Dated: July 13, 1988.

**Marvin M. Amernick,**

*Chief, Value, Special Programs & Admissibility Branch.*

[FR Doc. 88-16177 Filed 7-18-88; 8:45 am]

BILLING CODE 4820-02-M

## UNITED STATES INFORMATION AGENCY

### Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on July 27, 1988, in Room 3557, 400 Sixth Street SW., Washington, DC. Below is the intended agenda.

Wednesday, July 27, 1988

Part One—Closed to the Public

10:00 a.m. 1. Report by the Director of Radio Marti (Including status of back-up frequency)
10:45 a.m. 2. Status of selection of executive director
11:00 a.m. 3. TV Marti
12:00 noon Lunch
1:00 p.m. 4. Status of annual report
1:15 p.m. 5. Public testimony period

Items one through three, which will be discussed from 10:00 a.m. to 12:00 noon, will be closed to the public. Items one and three involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Item two relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact Kathy Litwak (202) 485-7011 to make prior arrangements, as access to the building is controlled.

Dated: July 13, 1988.

**Marvin Stone,**

*Deputy Director.*

[FR Doc. 88-16149 Filed 7-18-88; 8:45 am]

BILLING CODE 8230-01-M

## VETERANS ADMINISTRATION

### Privacy Act of 1974; New System of Records

The Privacy Act of 1975 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence of character of their systems of records. Accordingly, the Veterans Administration (VA) published and adopted a notice of its inventory of personnel records on September 27, 1977 (42 FR 49726).

Notice is hereby given that the VA is adding a new system of records entitled "General Personnel Records (Title 38)-VA (76VA05). This system is authorized under 38 U.S.C. 210(c)(1), Chapter 73 and 75.

The Office of Personnel Management system of records, "General Personnnel Records" (OPM/GOVT-1), covers the maintenance and release of information in general personnel records of Federal employees as defined in 5 U.S.C. 2105. To accommodate VA specific requirements under the Title 38 system and to facilitate administration of Privacy Act matters, the VA is publishing a new system of records.

The purpose of the new system of records is to officially establish a repository for the existing and future records, reports of personnel actions, and the documents and papers required in connection with these actions that were or will be effected during a Title 38 employee's service with the VA. Records in this system have various uses, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services.

This system contains routine uses as defined by the Privacy Act of 1974. These routine uses are compatible with the purpose for which the information is collected. The VA has determined that certain releases of data and information are necessary and proper for this system of records and these releases are described in the following system description.

Interested persons are invited to submit written comments, suggestions, or objections regarding this system of records to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before August 17, 1988 will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays), until August 31, 1988.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by the Veterans Administration, the routine uses in this system are effective August 17, 1988.

A "Report of New System" and an advance copy of the new system have been sent to the Speaker of the House, the President of the Senate, and the Director, Office of Management and Budget (OMB), as required by 5 U.S.C. 552a(o) (Privacy Act) and guidelines issued by OMB (50 FR 52730), December 24, 1985.

The Office of Management and Budget requires that a new system report be distributed not later than 60 days prior to the implementation of a new system. OMB has been requested to waive this requirement.

Approved: July 11, 1988.
**Thomas K. Turnage,**
*Administrator.*

**76VA05**

**SYSTEM NAME:**

General Personnel Records (Title 38)–VA.

**SYSTEM LOCATION:**

Active records are maintained at the Veterans Administration (VA) Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, VA field facilities, and the VA Data Processing Center, 1615 East Woodward Street, Austin, Texas 78772. The inactive records are retired to the National Personnel Records Center, 111 Winnebago Street, St. Louis, Missouri 63118.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current and former employees appointed under 38 U.S.C. Chapter 73 to the occupations identified in 38 U.S.C. 4103, 4104(1), and 4104(3); individuals in those occupations who are appointed under 38 U.S.C. 4114; and residents appointed under 38 U.S.C. 4114(b). This includes employees such as non-physician facility Directors, physicians, dentists, podiatrists, optometrists, nurses, nurse anesthetists, physician assistants, expanded-function dental auxiliaries, certified respiratory therapy technicians, registered respiratory therapists, licensed physical therapists, and licensed practical or vocational nurses. Current and former employees appointed under 38 U.S.C. Chapter 75 in the Veterans Canteen Service are also covered.

**CATEGORIES OF RECORDS IN THE SYSTEMS:**

Records in this system are official personnel files reflecting work experience, licensure, credentials, educational level achieved, and specialized education or training occurring outside of Federal service; records reflecting Federal service and documenting work experience, education, training, and/or award received while employed, and all other information relating to qualifications; records containing information about past and present positions held, grades, salaries, duty station locations, and notices of all personnel actions such as appointments, transfers, reassignments, details, promotions, demotions, reductions-in-force, resignations, separations, suspensions, approval of disability retirement applications, retirements, and removals; records regarding career development and counseling(s); recruitment and employment files; promotion, upward mobility, and conversion files; suitability files; computer printouts from an automated personnel system; records reflecting enrollment or declination of enrollment in the Federal Employees' Group Life Insurance Program and Federal Employees' Health Benefits programs as well as forms showing designation of beneficiary; records documenting findings and recommendations of reviewing Boards; certifications of outside professional activities; records relating to Government-sponsored training or participation in VA or other programs designed to broaden an employee's work experience and/or for purposes of advancement; performance appraisals or proficiency reports, supporting documentation, written recommendations for performance-based actions, statements made by the employee regarding an appraisal/proficiency report given, and any recommendations made based on them; records are documents on the processing of adverse actions and actions based on inaptitude, inefficiency, misconduct or disqualification during probation, any notice of proposed action, materials relied on by the VA to support the reasons in the notice, replies by the employee, statements of witnesses, hearing notices, reports, and decisions made.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

38 U.S.C. Chapter 3, Section 210(c)(1), Chapters 73 and 75.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. To disclose information to the Office of Personnel Management for the Central Personnel Data File.

2. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (private vendors of training course or programs, private schools, etc.) for training purposes.

3. To disclose information to educational institutions on appointment of a recent graduate to a position in the Federal service, and to provide colleges and university officials with information about their students working under programs necessary to a student's obtaining credit for the experience gained.

4. To disclose information to: The Department of Labor, Social Security Administration, Department of Defense, Federal agencies that have special civilian employee retirement programs; or a national, state, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., state unemployment compensation agencies), where necessary to adjudicate a claim under the retirement, insurance or health benefits programs of the Office of Personnel Management or an agency cited above, or to an agency to conduct an analytical study or audit of benefits being paid under such programs.

5. To disclose to the Office of Federal Employees' Group Life Insurance, information necessary to verify election, declination, or waiver of regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

6. To disclose to health insurance carriers contracting with the Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

7. To disclose information to a Federal, State, or local agency for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

8. To consider and select employees for incentive awards and other honors and to publicize those granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize employee awards or honors.

9. To consider employees for recognition through administrative and quality step increases and to publicize those granted. This may include disclosure to other public and private organizations, including new media, which grant or publicize employee recognition.

10. To disclose information to officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matter affecting working conditions.

11. To disclose pertinent information to the appropriate Federal (including offices of Inspector General), State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

12. To disclose information to any source when necessary to obtain information relevant to a conflict-of-interest investigation or determination.

13. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefits.

14. To disclose to an agency in the executive, legislative, or judicial branch, or the District of Columbia's Government in response to its request, or at the initiation of the VA information in connection with the hiring of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, the issuance of a license, grant, or other benefits by the requesting agency, or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision.

15. To disclose information to private sector (i.e., non-Federal, State, or local governments) agencies, organizations, boards, bureaus, or commission (e.g., the Joint Commission on Accreditation of Healthcare Organizations). Such disclosures may be made only when: (1) The records are properly constituted in accordance with VA requirements; (2) the records are accurate, relevant, timely, and complete; and, (3) the disclosure is in the best interests of the Government (e.g., to obtain accreditation or other approval rating). When cooperation with the private sector entity, through the exchange of individual records, directly benefits the VA's completion of its mission, enhances personnel management functions, or increases the public confidence in the VA's or the Federal Government's role in the community, then the Government's best interests are served. Further, only such information that is clearly relevant and necessary for accomplishing the intended uses of the information as certified by the receiving private sector entity is to be furnished.

16. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19.

17. To provide information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

18. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, either when the Government is a party to a judicial proceeding or in order to comply with the issuance of a subpoena. Information is also made available pursuant to a court order directing production of personnel records.

19. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

20. To disclose information to the National Archives and Records Administration (NARA) for records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

21. To disclose to persons engaged in research and survey projects information necessary to locate individulas for personnel research or survey response, and to produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances, the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

22. To provide an official of another Federal agency information needed in the performance of official duties related to reconciling or reconstructing data files in support of the functions for which the records were collected and maintained.

23. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is responsible for the care of the individual to the extend necessary to ensure payment of benefits to which the individual is entitled.

24. To disclose to the VA-appointed representative of an employee all notices, determinations, decisions, or other written communications issued to the employee in connection with an examination ordered by the VA under medical evaluation (formerly fitness-for-duty) examination procedures or Agency-filed disability retirement procedures.

25. To disclose to a requesting agency, organization, or individual the home address and other relevant information on those individuals who, it is reasonably believed, might have contacted an illness, been exposed to, or suffered from a health hazard while employed in the Federal work force.

26. To disclose to the Department of Defense specific civil service employment information required under law on individuals identified as members of the Ready Reserve, to ensure continuous mobilization readiness of Ready Reserve units and members.

27. To disclose information to the Department of Defense, National Oceanic and Atmospheric Administration, U.S. Public Health Service, and the U.S. Coast Guard needed to effect any adjustments in retired or retained pay required by the dual compensation provisions of section 5532 of Title 5, United States Code.

28. To disclosue information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

29. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations of alleged or possible discrimination practices, examination of Federal affirmative employment programs, compliance with the Uniform Guidelines on Employee Selection Procedures, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

30. To disclose information to the Federal Labor Relations Authority (including its General Counsel) when requested in connection with investigation and resolution of allegations of unfair labor practices, in connection with the resolution of exceptions to arbitrator awards when a question of material fact is raised and matters before the Federal Service Impasses Panel.

31. To disclose to prospective non-Federal employers, the following information about a specifically identified current or former employee: Tenure of employment; civil service

status; length of service in the VA and the Government; and when separated, the date and nature of action as shown on the Notification of Personnel Action—Standard Form 50 (or authorized exception).

32. Records from this system of records may be disclosed to a State or local government licensing board and/or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning individual's employment histories or concerning the issuance, retention or revocation of licenses or registrations necessary to practice an occupation, profession or specialty, in order for the Agency to obtain information determined relevant to an Agency decision concerning the hiring, retention or termination of an employee or to inform licensing boards or the appropriate non-government entities about the health care practices of a terminated, resigned or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of private sector patients.

33. To disclose information to a State or local government entity which has the legal authority to make decisions concerning the issuance, retention or revocation of licenses, certifications or registrations required to practice a health care profession, when requested in writing by an investigator or supervisory official of the licensing entity for the purpose of making a decision concerning the issuance, retention or revocation of the license, certification or registration of a named health care professional.

34. To disclose relevant information to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

35. To disclose information including the name, social security number, date of birth, sex, annual salary, service computation date of basic active service date, separation or retirement date, veteran's preference, retirement status, occupational series, position occupied, work schedule (full-time, part-time, or intermittent), Agency identifier, geographic location (duty station location), standard metropolitan statistical area, special program identifier, and submitting office number of all Federal employees to agencies participating in the "Federal Employee Receiving Government Assistance" Matching Program conducted by the President's Council on Integrity and Efficiency to help eliminate fraud and abuse in the benefit program administered by agencies within the Federal Government and to collect debts and overpayments owed to the Federal Government.

36. To disclose to requesting States (and, upon specific VA approval, by those States to local governments) information including the name, social security number, date of birth, sex, annual salary, separation or retirement date, retirement status, occupational series, position occupied, work schedule (full-time, part-time, intermittent), Agency identifier, geographic location (duty station location), standard metropolitan statistical area, special identifier, and submitting office number of Federal employees for use in computer matching to help eliminate fraud and abuse in the benefit programs administered by the States and to collect debts and over-payments owed to those governments and their components.

37. To disclose hiring, performance, or other personnel-related information to any facility with which there is, or there is proposed to be, an affiliation, sharing agreement, contract, or similar arrangement, for purposes of establishing, maintaining, or expanding any such relationship.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper documents, microfilm, magnetic tape, disk.

**RETRIEVABILITY:**

Both paper and automated records are retrieved by name, birth date, social security number, or identification number of the individual on whom they are maintained.

**SAFEGUARDS:**

Access to VA working and storage areas is restricted to VA employees on a "need to know" basis; strict control measures are enforced to ensure that disclosure to these individuals is also based on this same principle. VA file areas are locked after normal duty hours and are protected from outside access by the Federal Protective Service.

Access to the VA Data Processing Center is restricted to authorized VA employees and authorized representatives of vendors. Access to the computer rooms within the data processing center is further restricted to especially authorized VA personnel and vendor personnel. Access to computerized records is limited through use of access codes and entry logs. Additional protection is provided by electronic locking devices, alarm systems, and guard service.

Exchange of data from the system between the data processing center and the VA health care facilities is by use of the VADATS telecommunications network. Access to the VADATS network equipment is restricted since it is in the communications center of each facility. Strict control measures are enforced to ensure that disclosure is limited to a "need to know" basis.

**RETENTION AND DISPOSAL:**

Records are maintained and disposed of in accordance with the records disposition authorities found in General Records Schedule 1 and VA Records Control Schedule 10–1, except where otherwise required to be retained for a longer period of time.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Personnel and Labor Relations (05), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

Individuals wishing to inquire whether this system of records containing information about them should contact the local VA facility at which they are or were employed. It is necessary that the following information be furnished in order that the appropriation records may be located and identified: full name(s); date of birth; social security number; and signature. To facilitate records identifiation, former employees must also provide the name of their last duty station, if different than last employing facility, and approximate dates of employment.

**RECORD ACCESS PROCEDURES:**

(See Notification Procedure.)

**CONTESTING RECORDS PROCEDURES:**

Current employees wishing to request amendment of their records should contact the Personnel Officer of their current installation. Former employees should contact the Director, Office of Personnel and Labor Relations. (See System Manager(s) and Address.) Individuals must furnish the following information for their records to be located and identified: Full name(s); date of birth; social security number; and signature. To facilitate records identification, former employees must also provide the name of their last

employing facility and approximate dates of employment.

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided by the individual employee; examining physicians; educational institutions; VA officials and other individuals or entities, e.g., job references and supporting statements; testimony of witnesses; and correspondence from organizations or persons, e.g., licensing boards.

[FR Doc. 88-16133 Filed 7-18-88; 8:45 a.m.]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 138
Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**DATE AND TIME:** 2:00 p.m. (eastern time) Tuesday, July 26, 1988.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street NW., Washington, DC 20507.

**STATUS:** Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

**MATTERS TO BE CONSIDERED:**

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations (Optional).

Closed Session

1. Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.
2. Litigation Authorization: General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on the EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance of future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings.)

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, Executive Secretariat on (202) 634-6748.

Date: July 14, 1988.

**Frances M. Hart,**

*Executive Officer, Executive Secretariat.*

This Notice Issued July 14, 1988.

[FR Doc. 88-16243 Filed 7-18-88; 8:45 am]

BILLING CODE 6750-06-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 11:00 a.m., Monday, July 25, 1988.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: July 15, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-16287 Filed 7-15-88; 4:09 pm]

BILLING CODE 6210-01-M

**FEDERAL ENERGY REGULATORY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** July 6, 1988, 53 FR 26128.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** July 13, 1988, 10:00 a.m.

**CHANGE IN THE MEETING:** The following Item has been added to the agenda of July 13, 1988:

*Item No., Docket No. and Company*

M-7—CP88-532-000 and RP86-169-000, ANR Pipeline Company
M-7—CP86-589-000, Colorado Interstate Gas Company
M-7—RM87-5-000, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 88-16301 Filed 7-15-88; 4:07 pm]

BILLING CODE 6717-02-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Tuesday, July 26, 1988 at 4:00 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints
5. Inv. No. 731-TA-411 (P) (Calcined Bauxite Proppants from Australia)—briefing and vote.
6. Inv. No. 731-TA-370-380 (F) (Certain Brass Sheet and Strip from Japan and the Netherlands)—briefing and vote.
7. Any items left over from previous agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 252-1000.

**Kenneth R. Mason,**

*Secretary.*

July 12, 1988.

[FR Doc. 88-16295 Filed 7-15-88; 4:09 pm]

BILLING CODE 7020-02-M

**INTERNATIONAL TRADE COMMISSION**

**TIME AND DATE:** Thursday, July 28, 1988 at 4:30 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Inv. Nos. 701-TA-287 (F) and 731-TA-378 (F) (Certain Electrical Conductor Aluminum Redraw Rod from Venezuela)—briefing and vote.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth R. Mason, Secretary (202) 252-1000.

**Kenneth R. Mason,**

*Secretary.*

July 12, 1988.

[FR Doc. 88-16296 Filed 7-15-88; 4:09 pm]

BILLING CODE 7020-02-M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of July 18, 25, August 1, and 8, 1988.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of July 18**

*Thursday, July 21*

10:00 a.m.
Briefing on Current Status of Information Regarding the Possible Use of Substandard Components in Nuclear Power Plants (Public Meeting)
2:00 p.m.
Briefing on Individual Plant Examinations Generic Letter (Public Meeting)
3:30 p.m.
Affirmative-Discussion and Vote (Public Meeting) (if needed)

*Friday, July 22*

10:00 a.m.

Briefing on Interim Report on BWR Mark I Containment Issues (Public Meeting)

**Week of July 25—Tentative**

No Commission meetings scheduled for Week of July 25.

**Week of August 1—Tentative**

*Wednesday, August 3*

2:00 p.m.
Annual Briefing by NUMARC (Public Meeting)

*Thursday, August 4*

2:00 p.m.
Briefing on the Status of Sequoyah I (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Friday, August 5*

10:00 a.m.
Briefing on Status of Efforts to Enhance Safety of Users of By-Products Materials (Public Meeting)

**Week of August 8—Tentative**

*Tuesday, August 9*

10:00 a.m.
Briefing on Status of Agreements with OSHA, EPA and FEMA Concerning Jurisdiction Over Non-Radiological Hazards (Public Meeting)

*Wednesday, August 10*

10:00 a.m.
Briefing on Current Status of Nuclear Materials Transportation (Public Meeting)

*Thursday, August 11*

10:00 a.m.
Briefing on Statue, Results, and Implementation of B&W Reassessment (Public Meeting)
2:00 p.m.
Follow on Briefing on Implementation of Severe Accident Policy (Public Meeting)
3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Discussion of Pending Investigations (Closed—Ex. 5 & 7) was held on July 12.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (301) 492–0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492–1661.

William M. Hill, Jr.,
*Office of the Secretary.*
July 14, 1988.

[FR Doc. 88–16289 Filed 7–15–88; 4:07 pm]
BILLING CODE 7590–01–M

# Corrections

Federal Register
Vol. 53, No. 138
Tuesday, July 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 606

**[Docket No. 87N-0091]**

### Current Good Manufacturing Practice Regulations for Certain Blood and Blood Components

*Correction*

In proposed rule document 88-13975 beginning on page 23414 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23414, in the third column, in the fourth paragraph, in the fifth and sixth lines, "21 U.S.C. 351(H)" should read "21 U.S.C. 351(h)".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88N-0025]**

### Biological Resources, Inc.; Opportunity for Hearing on Intent To Revoke U.S. License No. 915

*Correction*

In notice document 88-13985 beginning on page 23453 in the issue of Wednesday, June 22, 1988, make the following corrections:

1. On page 23453, in the second column, in the first complete paragraph, in the fifth line from the bottom, "electrophoresis" was misspelled.

2. On page 23454, in the first column, in the fourth line, "heading" should read "hearing".

3. On the same page, in the same column, in the 20th line, after "determination" insert "of wilfulness was based on the deficiencies".

4. On the same page, in the second column, in the last paragraph, in the second line from the bottom, "Commission" should read "Commissioner".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 88D-0050]**

### Investigation of Drugs in Humans; Availability of Revised Clinical Guideline

*Correction*

In notice document 88-13982 beginning on page 23456 in the issue of Wednesday, June 22, 1988, make the following correction:

On page 23456, in the third column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the fifth line, "DMRD's" should read "DMARD's".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ-920-08-4212-13; A-18992]**

### Exchange of Public Land and Private Mineral Estate in Mohave County, AZ

*Correction*

In notice document 88-14693 appearing on page 24802 in the issue of Thursday, June 30, 1988, make the following corrections:

1. In the first column, in the third line from the bottom, "N½S½N½NW¼S W¼" should read "N½S½N½N½N W¼SW¼".

2. In the third column, the 25th line should read "Sec. 19, lots 1 and 2, E½, E½NW¼;".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA 943-08-4220-10; CA 17849]**

### Proposed Withdrawal and Opportunity for Public Meeting; California

*Correction*

In the issue of Monday, June 27, 1988, on page 24171 in the first and second columns, a correction to FR Doc. 88-11820 appeared incorrectly and should have appeared as follows:

In the second column, under T. 11 N., R. 2 W., in Sec. 10, the second line should read "½S½SE¼".

BILLING CODE 1505-01-D

federal register

Tuesday
July 19, 1988

Part II

# Environmental Protection Agency

**40 CFR Parts 117, 302, and 355**
**Reporting Exemptions for Federally Permitted Releases of Hazardous Substances; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 117, 302, and 355**

**[FRL-3207-3]**

## Reporting Exemptions for Federally Permitted Releases of Hazardous Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, requires that the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that is equal to or greater than its reportable quantity (RQ) shall immediately notify the National Response Center of the release. Section 102(b) sets an RQ of one pound of hazardous substances, except those for which RQs have been established pursuant to section 311a(b)(4) of the clean Water Act. Section 102(a) authorizes the U.S. Environmental Protection Agency (EPA) to adjust RQs for hazardous substances and to designate as hazardous substances those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment.

The notification requirement under sections 103(a) and 103(b) of CERCLA applies to any release of a hazardous substance "other than a federally permitted release." Section 101(10) of CERCLA defines "federally permitted release" in terms of the discharge requirements of a number of State and Federal programs. Section 107(j) of CERCLA also exempts a "federally permitted release" from liability under CERCLA for response costs and damages incurred due to the release.

The purpose of this rulemaking is to clarify the federally permitted release exemption from CERCLA release reporting and liability provisions. Today's proposed rule also addresses this exemption from the notification requirements under Title III of the Superfund Amendments and Reauthorization Act of 1986. The Agency also proposes in this rule to make conforming changes to the regulation (40 CFR Part 117) describing the notification requirements for releases of hazardous substances under section 311 of the Clean Water Act. Finally, this rulemaking addresses several issues related to which releases into the environment require notification under CERCLA.

**DATES:** Comments must be submitted on or before September 19, 1988.

**ADDRESSES:**

*Comments:* Comments should be submitted in triplicate to: Emergency Response Division, Superfund Docket Clerk, Attention: Docket Number 101(10) FPR, Room LG-100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

*Docket:* Copies of materials relevant to this rulemaking are kept in Room LG-100, at the above address. The docket is available for inspection between 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding Federal holidays. Appointments to review the docket can be made by calling 202/382-3046. As provided in 40 CFR Part 2, a reasonable fee (the first 50 pages are free and each additional page costs $.20) may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Hubert Watters, Project Officer, Response Standards and Criteria Branch, Emergency Response Division (WH-548B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2463; or the

RCRA/Superfund Hotline, 1-800/424-9356; in Washington, DC, 1-202/382-3000.

The toll-free telephone number of the National Response Center is 1-800/424-8802; in the Washington, DC metropolitan area, the number is 1-202/426-2675.

**SUPPLEMENTARY INFORMATION:** The contents of today's preamble are listed in the following outline:



## I. Introduction and General Comments

### *A. Background*

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Pub. L. 96-510), 42 U.S.C. 9601 *et seq.* (CERCLA or the Act), enacted on December 11, 1980, and amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499), establishes broad Federal authority to respond to releases or threats of releases of hazardous substances from vessels and facilities. Section 101(14) of CERCLA defines the term "hazardous substances" chiefly by reference to other environmental statutes with authority further granted to the U.S. Environmental Protection Agency (EPA) to designate additional hazardous substances under CERCLA section 102(a). The CERCLA list currently contains 721 hazardous substances.

Section 103(a) of the Act requires that, as soon as the person in charge of a vessel or facility has knowledge of a release of a hazardous substance from such vessel or facility in a quantity equal to or greater than the reportable quantity (RQ) for that substance, the person shall notify the National Response Center immediately. Section 102(b) of CERCLA establishes RQs for releases of hazardous substances at one pound, except for those substances whose RQs were established at a different level pursuant to section 311(b)(4) of the Clean Water Act (CWA). Section 102(a) of CERCLA authorizes the EPA Administrator to adjust all of these RQs by regulation (see 40 CFR 302.4).

Section 109 of CERCLA and section 325 of SARA Title III authorize EPA to assess civil penalties for failure to report releases of hazardous substances that equal or exceed their RQs. Section 103 of CERCLA, as amended, authorizes EPA to seek criminal penalties for submitting false or misleading information in a notification made pursuant to CERCLA section 103, and increases the maximum penalties and years of imprisonment for violation of the CERCLA section 103 reporting requirement.

One of the exemptions from section 103 reporting requirements is for "federally permitted releases." The definition of "federally permitted release" in CERCLA section 101(10) specifically identifies releases permitted under other environmental statutes, including the following general types of releases:

- Discharges covered by a National Pollutant Discharge Elimination System (NPDES) permit, permit application, or permit administrative record;
- Discharges in compliance with a legally enforceable permit for dredged or fill materials under section 404 of the CWA;
- Releases in compliance with a legally enforceable Resource Conservation and Recovery Act (RCRA) hazardous waste management facility final permit;
- Releases in compliance with a legally enforceable permit under the

Marine Protection, Research, and Sanctuaries Act;

- Any injections of fluids authorized under federally approved underground injection control programs (including federally authorized State programs) pursuant to Part C of the Safe Drinking Water Act;
- Any air emissions subject to permit or control regulations under certain provisions of the Clean Air Act (CAA);
- Any injections of fluids or other materials authorized by applicable State law for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, or for other production or enhanced recovery purposes;
- The introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with pretreatment standards and a pretreatment program submitted to EPA for approval; and
- Any release of source, special nuclear, or byproduct material in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act.

In the May 25, 1983 Notice of Proposed Rulemaking (NPRM) (48 FR 23552) to adjust certain RQs, EPA explained the Agency's interpretation of each of the types of releases exempted by the definition of "federally permitted release." EPA has decided to repropose the rule for federally permitted releases today rather than publish a final rule because of the amount of time that has passed since the original proposal. Today's proposed regulation would add a definition of "federally permitted release" to 40 CFR 302.3, Definitions.[1]

EPA received many comments on various aspects of the federally permitted release exemption, most of which urged a broader interpretation of one or more of the exemption categories. General comments on the scope of the exemption are discussed below, followed by discussion of comments on specific types of federally permitted releases.

Several commenters discussed the potential duplication between CERCLA reporting requirements and reporting requirements under existing permit programs for releases exceeding levels set by the terms of the permit. These commenters suggested that, because permit programs already may require notification of a regulatory authority in the event of a release exceeding permit levels, such releases should be exempt from notification when permitted levels are exceeded by an RQ or more. CERCLA section 101(10), however, generally limits the federally permitted release exemption to those releases "in compliance with" permitted or regulatory requirements. A straightforward interpretation of the statute indicates that if a release exceeds permitted levels, it is not "in compliance with" the permit and cannot be "federally permitted." Therefore, if the amount of the release exceeding the permitted level, i.e., the portion of the release that is not federally permitted, is equal to or exceeds the RQ, the release must be reported immediately to the National Response Center. This approach also avoids the numerous and unnecessary reports that could be generated by the reporting of small permit excursions that are better addressed by the permitting authority.

EPA believes that its interpretation is required by the plain language of the statute and is essential to ensure adequate protection of public health and the environment. The Agency believes that CERCLA reporting and reporting under permit programs is not duplicative because there are significant differences between the purposes served by CERCLA notification and the purposes of permit programs. The permit notification requirements and the information that is reported under permit programs may differ from one program to another. If permit notification requirements were allowed to suffice for CERCLA notification, the information available to the CERCLA program on releases might be inconsistent and incomplete. Permit programs also differ in their reporting mechanisms and do not always require immediate notification. In some cases, releases in excess of permitted levels need only be reported at specific intervals (e.g., monthly). Moreover, releases in excess of permit levels are reported to different Federal and State authorities, depending upon the permit. CERCLA requires immediate notification to a central office, the National Response Center, as soon as the person in charge has knowledge of a release equal to or exceeding an RQ, so that timely response may be initiated if the appropriate government authority determines that the release may present substantial danger to public health or the environment.

Moreover, EPA is not convinced that requiring persons in charge of a vessel or facility to make additional telephone calls (to the National Response Center, the local community emergency coordinator, and the State emergency response commission) to a toll-free or local number constitutes an undue burden on the regulated community. The Agency seeks comments on its interpretation of the burdens and the benefits of requiring reporting under CERCLA and Federal or State permit programs.

Several commenters recommended that releases be considered federally permitted releases (and therefore exempt from CERCLA notification and liability provisions) if they are exempt from regulation by the statutes listed in CERCLA section 101(10). EPA believes that exempting such releases would be contrary to the purpose of the notification requirements, which is to protect human health and the environment by requiring that responsible authorities be notified of releases that may require a timely response. The exemption of a type of release from regulation under a particular statute may have little or no bearing on whether a Federal response action might be needed for a specific release.

Examples illustrate the disparate reasons for exemptions. For instance, owners or operators of certain solid waste disposal facilities that handle hazardous waste only from generators of less than 100 kg. per month of nonacutely hazardous waste (See 40 CFR 261.5) are exempt from the requirement to obtain a hazardous waste management facility permit under section 3005 of RCRA. The exemption is based on a balancing of the administrative burden of including such wastes in the Subtitle C system against the threat the Agency determined would be posed by disposing of the wastes in unpermitted facilities (45 FR 33066, 33102–33105 (May 19, 1980)). Certain types of hazardous waste recycling activities—for example, the act of reclamation of a hazardous waste or burning a hazardous waste in a boiler or industrial furnace to recover energy—are exempt from regulation while EPA determines appropriate regulatory regimes for these activities. (See 40 CFR 261.6 and 40 CFR Part 266). Under the CWA, electroplating facilities that produce 1000 gallons of effluent per day are exempted from effluent standards because compliance is economically infeasible for these small firms (39 FR 11510, March 28, 1974). In each instance, the release may require response action, and the fact that the release is exempted from the statutory requirements is not relevant to this determination. The Agency has determined, therefore, that releases exempted from regulation by the statutes listed in section 101(1f) will

[1] Further, today's proposal revises the definition of "release" to reflect SARA amendments to CERCLA section 101(22).

not be considered federally permitted releases.

Although certain releases may not qualify as federally permitted, they may not pose a sufficient hazard to warrant reporting to the National Response Center. The Administrator will consider establishing an administrative exemption from CERCLA notification requirements if it appears that certain releases pose no hazard or pose a hazard only rarely and under circumstances that would not likely result in any action being taken to respond to the hazard. However, no such exemptions are proposed under this regulation.

One commenter requested that a release still be considered a federally permitted release when there is only a "technical" violation of permit conditions (i.e., where the violation relates to operating, monitoring, or reporting procedures and does not affect the character or quantity of the release). EPA agrees that notification of the National Response Center would be unnecessary in such a case and should be addressed by the permit programs, where appropriate, as a permit violation. If the characteristics of a release (both the substance involved and the quantity or concentration are in compliance with a permit described in section 101(10), CERCLA notification will not be required. However, to the extent that a release exceeds the permit limit with regard to the quantity of a hazardous substance, it will not be considered a federally permitted release and CERCLA notification will be required when the release of the hazardous substance exceeds its permitted level by an RQ or more. Some Federal permit programs do not include quantitative limits on the amounts of specific hazardous substances that can be released. Accordingly, no "permitted level" exists against which the released quantity can be compared to determine whether CERCLA notification is required (i.e., whether the permitted level has been exceeded by an RQ or more). In such cases, CERCLA notification will be required when the characteristics of the release are not in compliance with the permit (e.g., the allowable concentration of a particular constituent has been exceeded) and an RQ or more of a hazardous substance has been released.

Several commenters urged that various types of releases (such as all "routine" releases or releases covered by other permit programs) not mentioned in section 101(10) be considered federally permitted release. EPA cannot support this position. Federally permitted releases are specifically listed in section 101(10). This detailed list clearly indicated that Congress did not intend releases other than those listed in section 101(10) to be considered federally permitted and thereby exempt from CERCLA reporting and liability requirements.

*B. Relationship to Reporting Under Title III*

Title III of SARA (sections 301-329) addresses emergency planning and community right-to-know and provides, among other things, emergency and annual notification requirements in addition to those included in section 103 of CERCLA. EPA has provided (see 52 FR 13377, April 22, 1987; 52 FR 21152, June 4, 1987) and will continue to provide regulations and guidance on the Title III requirements as necessary and appropriate.

With respect to emergency notification requirements, section 304 of SARA provides release reporting requirements that parallel the requirements of section 103(a) but are intended to make release information immediately available to State and local emergency officials as well as Federal response officials notified under CERCLA section 103. In addition, section 304(a) requires reporting of (1) releases for which notification is required under section 103(a) of CERCLA, and (2) releases of "extremely hazardous substances" that are not hazardous substances under CERCLA but that "occur in a manner which would require notification under section 103(a)" of CERCLA. Federally permitted releases, as defined by CERCLA section 101(10), are not required to be reported under section 304 of SARA (see 52 FR 13383). To clarify the type of releases that are defined as federally permitted releases, and thereby exempt from SARA section 304 reporting, today's rule proposes to revise the applicability section of the regulation implementing section 304 (40 CFR 355.40(a)) to add the definition of "federally permitted releases" provided in this rule. Thus, the interpretation of federally permitted release proposed in today's rule will define clearly the scope of the releases reportable under SARA section 304. With respect to annual notification of toxic chemical releases required under SARA section 313, however, federally permitted releases are not exempt.

**II. Elements of the Exemption**

Each element of the federally permitted release exemption is discussed below. Relevant comments received on the may 25, 1983, NPRM pertaining to each element also are discussed.

*Releases from Point Sources with National Pollutant Discharge Elimination System (NPDES) Permits. Introduction.* Section 101(10) identifies three types of releases from point sources with NPDES permits as federally permitted releases:

(A) discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act, (B) discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit, (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems * * *.

This language is identical to that used in section 311(a)(2) of the CWA to exclude these releases from the term "discharge" with respect to EPA's oil and hazardous substances spill response and prevention program. Furthermore, Congress intended, in enacting CERCLA section 101(10) (A), (B), and (C), that EPA's interpretation of the provisions under the CWA be continued under CERCLA. (See S. Rep. No. 848, 96th Cong., 2nd Sess. 47 (1980).) Reflective of Congressional intent, the Agency proposes today that the interpretation provided in the regulatory language and the preambles to the rules implementing the CWA section 311(a)(2) exclusions be applied to the same exemptions under CERCLA section 101(10) (A), (B), and (C).

The legislative history of the CWA explains that the purpose of the section 311 exemptions was to exclude from the spill response provisions of section 311 three types of discharges subject to regulation under other CWA provisions; specifically, section 402 NPDES permits and section 309 enforcement provisions. Senator Stafford explained that:

* * * we are attempting to draw a line between the provisions of the [CWA] under sections 301, 304, 402 regulating chronic discharges and 311 dealing with spills. At the extremes, it is relatively easy to focus on the difference but it can become complicated. The concept can be summarized by stating that those discharges of pollutants that a reasonable man would conclude are associated with permits, permit conditions, operation of treatment technology and permit violations would result in 402/309 sanctions; those discharges of pollutants that a reasonable man would conclude are episodic or classical spills not intended or capable of being processed through the permitted treatment system and outfall would result in

the application of section 311. (124 Congressional Record 37683 (1978).)

In 1979, the Agency promulgated 40 CFR Part 117, which contains CWA reporting requirements for discharges of hazardous substances (44 FR 50776, August 29, 1979). Section 117.12 provided a regulatory interpretation of the three exclusions to the defintion of "discharge" in 40 CFR Part 116 and CWA section 311(a)(2), and the preamble to the rule provided a detailed explanation of the three types of excluded discharges. In 1987, EPA amended the definition of "discharge" in 40 CFR Part 110, the discharge of oil regulation, to codify the same three CWA exclusions (52 FR 10712, April 2, 1987). The preamble to the oil discharge rule adopted the description of the three exclusions from the 1979 preamble to 40 CFR Part 117.

In today's rule, the Agency proposes to apply the existing interpretation of the three types of discharges that are excluded from coverage under CWA section 311 to the first three types of discharges under CERCLA section 101(10). Thus, this interpretation will apply to the following regulatory provisions: 40 CFR 110.1, 116.3, 117.12, 300.5, 302.3, and 335.40. The Agency, however, also is proposing to make two clarifying amendments to 40 CFR 117.12, as explained below, that also will be aplicable to the corresponding exemptions under 40 CFR Parts 110, 116, 300, 302, and 355.

In the paragraphs that follow, the three types of NPDES discharges that correspond to the federally permitted releases in CERCLA sections 101(10) (A), (B), and (C) are described. For simplicity, these discharges will be referred to as Type A, B, and C, respectively.

*Type A Discharges.* Type A discharges are those that are in compliance with an NPDES permit limit that specifically addreses the discharge in question. To qualify as a Type A discharge, the permit must either address the discharge directly through specific effluent limitations or through the use of indicator pollutants. In the case of the latter, the administrative record prepared during permit development must identify specifically the discharge of the pollutant as one of those pollutants the indicator is intended to represent.

*Type B Discharges.* Type B discharges are foreseeable (i.e., identified in the NPDES permit's development record) and flow into a facility's effluent treatment system designed to treat the discharge. This second type of discharge is limited to on-site spills to the permitted treatment system that were identified and considered in the issuance of the permit but are not subject to any specific effluent limitations. Discharges are included only where (1) the source, nature, and amount of a potential discharge were identified and made part of the public record, and (2) the permit contained a condition requiring that the treatment system be capable of eliminating or abating the potential discharge.

Therefore, if an on-site spill was processed through a treatment system capable of eliminating or abating the spill, and the spill is subject to a permit condition, a discharge resulting from the on-site spill would be subject to CWA sections 402 and 309 and would be a federally permitted release. If an on-site spill is not passed through a treatment system or is not otherwise treated in any way, the discharge resulting from the on-site spill is subject to CWA section 311 and is not a federally permitted release. Also, discharges that result from on-site spills that are passed through treatment systems (1) that have not been demonstrated as capable of eliminating or abating the discharge or (2) for which no permit condition exists are subject to CWA section 311 and are not federally permitted releases under CERCLA.

A "permit condition" would include the existence of a treatment system or release prevention plans and other best management practices designed to address the discharge. Best management practices are operating methods or procedures to prevent or minimize the potential for the discharge of toxic or hazardous substances from processes ancillary to the industrial manufacturing or treatment process. For example, a discharger has a drainage system that will route spilled material from a broken hose connection to a holding tank or basin for subsequent treatment or discharge at a specified rate. To be eligible as a Type B discharge, the discharger must identify specifically such a system in the permit application. The permit condition discussed in the application must be sufficient to treat the maximum potential spill from the identified source. Discharges that result from an on-site spill larger and more concentrated than the spill contemplated in the public record, and for which a condition was provided in the permit, will be subject to CWA section 311 and CERCLA notification and liability provisions (i.e., the discharge will not be a federally permitted release).

Today's rule proposes to amend 40 CFR 117.12(c) by deleting the phrase "whether or not the discharge is in compliance with the permit," for Type B discharges, to avoid confusion caused by the phrase. The phrase was originally included in the rule because Type B discharges are discharges that result from circumstances identified and considered in the issuance of a permit but that are not subject to any specific effluent limitations. The Agency is concerned that the phrase may be interpreted incorrectly to mean that Type B could refer to discharges in which the permittee did not satisfy the condition placed in the permit. Because the Agency believes that the phrase causes confusion, the Agency proposes to delete the phrase from the regulation. The Agency solicits comments on this proposed revision to 40 CFR 117.12(c).

*Type C Discharges.* Type C discharges are from a point source and are (1) continuous or anticipated intermittent discharges, (2) identified in a permit or permit application, and (3) caused by events occurring within the scope of the relevant operating and treatment systems. Included within the scope of this provision are chronic, process-related discharges resulting from periodic upsets in the manufacturing and treatment systems, for example, the discharge created by a system backwash. Discharges caused by spills or episodic events that release hazardous substances to the manufacturing or treatment systems are not Type C discharges. The language of 40 CFR 117.12(d) provides further examples of discharges that fit within the category: (1) Provided that an on-site spill is not the cause, contamination of noncontact cooling water or storm water; (2) an upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge; or (3) where the discharge originates in the manufacturing or treatment systems, a continuous or anticipated discharge of process waste water.

*Amendment to 40 CFR 117.12.* With respect to Type C discharges, the Agency also is proposing in today's rule to amend 40 CFR 117.12(d)(2)(iii) by deleting the term "operator error" from the description of "an upset or failure of a treatment system." [2] The reasons for

[2] Section 117.12(d)(2)(iii) presently states:

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, an operator error, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

the proposal to eliminate the term "operator error" are: (1) The use of the term "operator error" in describing an upset is inconsistent with the NPDES regulations (40 CFR 122.41) that provide that a discharge caused by an operator error is not an upset; and (2) the Agency believes that discharges caused by operator error are not likely to be "continuous or anticipated intermittent discharges," as provided by the statutory language. The Agency expects discharges caused by operator error to be episodic and unpredictable, as compared to discharges caused by system startups and shutdowns. The proposed deletion of the term "operator error" is intended to enhance the clarity and consistency of the regulatory language and is not meant to signal a change in policy. It is possible that under some circumstances an operator error may cause a failure of a treatment system or process, and produce a continuous or anticipated intermittent discharge. Such a discharge may meet the requirements for a federally permitted release. The term "upset" as used in 40 CFR Part 117, however, generally will be interpreted to be consistent with the term "upset" in 40 CFR Part 122, i.e., it does not include incidents caused by operational error. The Agency requests comments on its proposal to delete operator error from 40 CFR 117.12(d)(2)(iii).

*Conclusion.* Under both CWA section 311 and CERCLA, any discharge or release of a hazardous substance that is not federally permitted, as described above, must be reported immediately to the National Response Center if it exceeds permit limits by an RQ or more; if the hazardous substance discharge or release is not subject to a numerical permit limit, any discharge or release that triggers a permit violation and equals or exceeds an RQ must be reported immediately. Similarly, under 40 CFR Part 110, any oil discharge that exceeds permitted levels and causes an oil sheen must be reported immediately.

Discharges excluded from CWA section 311 coverage and defined as federally permitted releases under CERCLA sections 101(10) (A), (B), and (C) are subject to the CWA section 309 enforcement provision that provides EPA with the authority to issue compliance orders, bring civil actions, and impose criminal and civil penalties. In addition, under CWA section 311(b)(6)(D), if the Federal government incurs any costs of removal of discharges excluded by section 311(a)(2)(C), the Federal government can bring a civil action under the authority provided by CWA section 309(b) to recover such removal costs. Furthermore, under CERCLA section 107(j), the response costs incurred by the Federal government in connection with the federally permitted releases defined by section 101(10) (B) and (C) can be recovered through a civil action brought under the authority of CWA section 309(b).

Finally, all three exemptions raise the issue of timeliness of notification. The reporting requirements for releases exempted from CERCLA reporting and liability under section 101(10) (A), (B), and (C) and excluded from CWA section 311(a)(2) are subject to the 24-hour notification requirements under CWA section 402. The Agency acknowledges that Congress recognized that the 24-hour reporting requirement may "create gaps in action necessary to protect the public or the environment." (See S. Rep. No. 848, 96th Cong., 2nd Sess. 47 (1980).) The legislative history of section 101(10) suggests that the Agency could resolve this issue by amending the CWA section 402 reporting regulation to require that those releases excluded from CWA section 311 coverage and exempt from CERCLA reporting requirements be subject to an immediate notification requirement under the CWA section 402 NPDES regulations. (Ibid.) The Agency has not yet amended the NPDES regulations to require immediate notification of those releases exempt from section 311 and CERCLA. Before the Agency proposes to amend the CWA sectin 402 NPDES regulations (40 CFR Part 122) to revise the 24-hour notification requirement to an immediate notification requirement for the exempted releases, the Agency solicits comments on the "reporting gap," particularly examples of situations where the 24-hour notice was not sufficient to protect human health and the environment.

*Releases Subject to CWA Section 404 Permits.* Discharges that comply with a legally enforceable permit for dredge or fill materials under section 404 of the CWA also are federally permitted releases exempted from the notification requirements of CERCLA sections 103(a) and 103(b). Before issuing these permits, the government reviews the substances to be discharged. Permits allowing the discharge of hazardous substances are issued only if no significant degradation of the aquatic environment will result. This exemption applies to discharges in compliance with the terms and conditions of either an individual or a general CWA section 404 permit.

In regulations implementing section 311 of the CWA for hazardous substances, 40 CFR 117.12 (but not the regulations for oil in 40 CFR Part 110), EPA exempted from the notification requirement not only those releases that were in compliance with section 404 permits, but also those releases that were exempt from permit requirements under section 404 of the CWA (sections 404(f) and 404(r)). These latter releases are not "federally permitted releases" for purposes of CERCLA because section 101(10)(D) is limited to releases in compliance with a legally enforceable permit under section 404 of the CWA. The Agency interprets the CERCLA notification requirements to exempt only those releases whose environmental and health effects have been evaluated and determined to be allowable under the appropriate permit program.

*Releases from Facilities with Final RCRA Permits.* Releases in compliance with a legally enforceable RCRA treatment, storage, or disposal final permit are, pursuant to CERCLA section 101(10)(E), federally permitted releases when the hazardous substances released are specified in the permit and subject under the permit to a specific limitation, standard, or control procedure (see 40 CFR Parts 264 and 270). Identifying releases on the record during the permit process is insufficient to qualify them for the section 101(10)(E) exemption because, in order to be exempt, the substances must be specified in the permit and subject to some permit condition or control.

Four commenters requested that facilities with interim status pursuant to section 3005(e) of RCRA and 40 CFR Part 265 be included in the "federally permitted release" definition. Some of the commenters indicated that it may be some time before these facilities are issued final permits. The legislative history specifically rejects application of this exclusion to releases from facilities with interim status (S. Rep. No. 848, 96th Cong., 2nd Sess. 48 (1980)).

*Releases Pursuant to Marine Protection, Research, and Sanctuaries Act Permits.* Section 101(10)(F) of CERCLA includes, in the definition of a federally permitted release, releases in compliance with legally enforceable permits issued under section 1202 (EPA ocean dumping permits) or section 103 (Corps of Engineers permits for ocean dumping of dredged materials) of the Marine Protection, Research, and Sanctuaries Act. Pursuant to EPA regulations, applicants for ocean dumping permits must identify the physical and chemical properties of the materials to be discharged, and the permit must identify the materials that may be discharged (see 40 CFR Parts 221 and 227). Similar procedures and criteria

apply to permits for ocean dumping of dredged material (see 33 CFR Part 324). These EPA and Corps of Engineers permits cover substances that can be discharged lawfully. Dumping of hazardous substances not specifically, allowed in these permits is subject to the notification requirements of CERCLA section 103(a) because emergency response officials should be made aware of releases not evaluated previously by a permit program for health and environmental effects.

*Underground Injections Authorized Pursuant to the Safe Drinking Water Act.* CERCLA section 101(10)(G) exempts from the notification requirements "any injection of fluids" authorized under Federal injection control programs or State programs submitted for Federal approval pursuant to Part C of the Safe Drinking Water Act (and not disapproved by EPA).

EPA has published regulations establishing technical standards and criteria (40 CFR Part 146) and regulations governing approval of State programs and permit procedures (40 CFR Parts 122–124). Under the Safe Drinking Water Act, the States are to take the primary role in implementing the underground injection control program; EPA is to administer the program only if the State fails to submit an approvable program within a specified time period. Any underground injection of hazardous substances permitted under a State program that has been approved, or submitted and not disapproved by EPA, or permitted under an EPA-administered program, is considered federally permitted for purposes of CERCLA notification.

*Emissions Subject to Clean Air Act Controls.* Section 101(10)(H) of CERCLA provides an exemption for hazardous substance emissions that are subject to a Clean Air Act (CAA) permit or control regulation (see 40 CFR Parts 52, 60, 61, and 62). However, as stated in the preamble to the May 25, 1983 NPRM, for this exemption to apply, any such CAA controls must be "specifically designed to limit or eliminate emissions of a designated hazardous pollutant or a criteria pollutant." (See S. Rep. No. 848, 96th Cong., 2nd Sess. 49 (1980)). The CAA exemption, therefore, cannot be read broadly to cover any and all types of air emissions. Moreover, as today's proposed rule makes clear, for the exemption to apply, the emission must be in compliance with the applicable permit or control regulation.

Several commenters suggested that the clear and unequivocal nature of the statutory language made elaboration on the CAA exemption unnecessary. Generally, these commenters took the view that the CAA exemption covers nearly all air emissions because such emissions are in one way or another controlled by the CAA—either directly because they contain substances specifically regulated by the CAA, or indirectly, for example, through emission limitations established as part of State Implementation Plans (SIPs) approved under section 110 of the CAA. Some commenters even claimed that because controls could be developed for any hazardous substance, any release to the air is "subject" to CAA controls.

EPA does not agree that the broadest interpretations, under which virtually all air emissions including dangerous episodic releases would be exempt from CERCLA reporting requirements, could have been intended by Congress under section 101(10). Moreover, the exemption for "federally permitted releases" under CERCLA section 101(10) also applies to reporting of air releases to State and local governments under Title III of SARA. Title III, which is the Emergency Planning and Community Right-to-Know Act of 1986, was enacted in large part as a response to dangers posed by chemical air releases to surrounding communities, such as the catastrophic release of methyl isocyanate in Bhopal, India. Because Title III was intended to address particularly the dangers of air releases, interpreting the exclusion for federally permitted releases so that accidental air releases would not be reported locally would be directly contrary to the legislative purpose. Similarly, the purpose of notification requirements under section 103 of CERCLA is to ensure that the government is informed of any potentially dangerous releases of hazardous substances to the environment for which timely response may be necessary. Establishing a very broad interpretation of CAA controls, as requested by the commenters, could eliminate virtually any CERCLA reporting of air emissions and, thus, the potential for early Federal responses; such an approach would eviscerate not only the Congressional intent but also the major purpose of the section 103 notification requirement.

In addition, some commenters urged EPA to interpret the federally permitted release exemption to include any air emission from a permitted source. Some of the commenters used the word "reviewed" almost interchangeably with the word "permitted." A "reviewed" release is not necessarily a "permitted" release or a controlled release. A permitted release is an allowable release of a specific substance or emission. A reviewed release generally may be one of many releases from a permitted source that is being checked for compliance with a variety of laws and regulations. The inclusion of a pollutant is a SIP review provision is not equivalent to subjecting the pollutant to CAA requirements or controls "designed specifically to limit or eliminate" the pollutant. (See S. Rep. No. 848, 96th Cong., 2nd Sess. 49 (1980)). A reviewed release, therefore, is not necessarily a federally permitted release.

Several commenters stated that the air release exemption should apply broadly to substances such as volatile organic compounds (VOC) or total suspended particulates (TSP) regulated under the CAA (including those regulated under approved State programs). The commenters claimed that a permit or regulatory limit on such categorical emissions in effect constitutes a limit on each constituent in the group. EPA generally agrees with this position, but again is concerned that an overbroad interpretation of the air release exemption could result in nonreporting of dangerous chemical releases. A large release of a substance from a pressure release valve over a short period of time could be within a VOC limit established for a source, yet could pose a threat to nearby residents. Although the categorical limits indirectly restrict each constituent, those limits were established based on routine emissions over a specific averaging time, and were not predicated on an upset or excursion from normal operations. The Agency does not believe, therefore, that such an upset or excursion should be considered "permitted" within the meaning of section 101(10)(H) of CERCLA.

EPA is soliciting public comment today on three approaches to distinguishing emissions permitted under the CAA from releases that could create potential hazards to surrounding areas and for which timely notification under CERCLA and Title III is necessary. Under the first approach, EPA would interpret the air release exemption in a manner similar to the exemption for releases regulated under the CWA. Thus, air releases would be permitted to the extent that the constituent hazardous substances have been identified, reviewed, and made part of the public record during the permit issuance, State implementation plan, or regulation development process for the pollutant that includes the hazardous substance. The exemption would not extend to releases of constituent hazardous substances of a permitted or regulated pollutant category that are not identified expressly on the record with respect to

the applicable permit or control program. Once the constituent hazardous substance had been identified and reviewed appropriately, the limitation on the category of emissions of hazardous substances would provide the "permit or control regulation" needed for application of the section 101(10)(H) exemption. A specific issue on which the Agency solicits comments is the inclusion of negative determinations under the CAA section 112 program in the exemption.

The second approach would interpret broadly the regulatory programs governing pollutants for which a National Ambient Air Quality Standard (NAAQS) has been established under CAA section 109. These programs are developed under CAA section 111 New Source Performance Standards (NSPS) or CAA section 110 State Implementation Plans (SIPs). Under this approach, EPA would distinguish between emissions of hazardous substances that are VOCs and regulated as precursors of ozone, and constituents of the other NAAQS pollutants. For example, emissions of constituents of particulate matter would be considered "subject to a permit or control regulation" and, therefore, exempt from notification requirements. Emissions of individual VOCs, however, would not be considered subject to permit or control regulations solely because they are indirectly controlled by regulations limiting total VOC emissions. These emissions of individual VOCs in amounts equal to or in excess of an RQ, consequently, would be subject to notification requirements.

This approach is based on the recognition that for five of the present NAAQS (sulfur dioxide, particulate matter, nitrogen oxides, lead, and carbon monoxide) the standards in each case are based on the evidence of health effects of those emissions. In contrast, emissions of VOCs are regulated based on their reactivity and consequent contribution to the creation of ambient ozone levels for which NAAQS have been set. In setting the ozone NAAQS or establishing emission limitations for VOCs, no consideration was given to any direct health effects of ambient concentrations of total or any constituent VOC. As a result, interpreting VOC emission limitations to subsume consideration of the possible health effects of constituents appears to be inappropriate. Using this interpretation, a substance would be considered federally permitted if it is a constituent of, and, therefore, limited by regulations or standards for, any of the five pollutants enumerated above, but not if it is limited by standards for VOCs.

Reportable quantities for the purpose of release notification requirements are established to ensure appropriate response to episodic releases of hazardous substances that have potential adverse health and environmental effects. A large release of an individual VOC in a quantity equal to or in excess of an RQ may be within total VOC emission limits and may make a negligible contribution to ozone formation, which is affected by photochemical conditions, meteorology, and the contributions of other VOC sources. Such a release may, nonetheless, potentially endanger human health because of the toxicity of the individual substance.

For example, under CAA section 111, EPA established controls on the rubber tire manufacturing industry limiting VOC emissions for a medium-sized plant to approximately 400 tons per year, or about 1.1 tons per day. Predominant VOCs emitted in the manufacturing process are white gasoline and petroleum naptha. Toluene, xylene, ketones, and esters are also used throughout the industry. (48 FR 2676, September 15, 1983.) A release on one day of an RQ or more of one of these VOC constituents, such as 1000 pounds of toluene, although within the total VOC release limit of approximately 1 ton per day may pose a threat to human health or the environment because the total VOC limitation is based on controlling the formation of ozone, and not on the toxicity of toluene or another of the VOC emission constituents. The Agency would take the position that interpreting NSPS or SIP VOC emission limitations to subsume consideration of the possible health effects of such VOC constituents, and thereby exempt them from notification requirements, is inappropriate. Thus, EPA would require notification of releases of VOC constituents in amounts equivalent to or greater than an RQ under the second approach.

As a third option, EPA could interpret the CAA federally permitted release exclusion to apply only to releases that are subject to a CAA permit or control regulation and that are either the "routine" emissions for which the permit or control regulation was designed or in compliance with a specific standard for release of that substance specified in the permit or regulation. Unpermitted, nonroutine releases would include upsets from such devices as pressure release valves, storage tank reactor vessels, or sudden releases from valve and pipe ruptures, equipment failure, and emergency startups and shutdowns.

EPA requests comments on these alternatives for defining the scope of the air release exemption. Specifically, EPA requests comments distinguishing releases of ozone precursors (VOC) constituents from releases of constituents of other categorical pollutants controlled by NAAQS. EPA also is soliciting comment on the "routine" vs. "nonroutine" distinction and the need to define "routine" in terms fo specific emission points or circumstances, and solicits comments on what emission points should be included. In addition, EPA is concerned that the first approach may lead to overreporting of routine releases subject to adequate control under existing regulatory or permit limits that could divert resources from releases requiring immediate response. EPA solicits information on the number of facilities and types of releases that would require reporting under these approaches, and the types of releases that would be excluded under either approach, particularly with respect to any potentially dangerous releases that may be excluded.

In addition, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) limits for radionuclides are health-based annual limits, whereas radionuclide RQs are reporting triggers based on 24-hour releases. The Agency will require a report if an RQ above any annual NESHAP limit is released in a 24-hour period. The Agency requests comments on the number of facilities and types of releases that may require reporting.[3]

*Injection of Materials Related to Development of Crude Oil or Natural Gas Supplies.* The injection of materials related to the production of crude oil, natural gas, or water is considered a federally permitted release if the injection material is authorized specifically under applicable State law. Because it is probable that all conceivable injection modes are not considered in State laws, EPA, in the preamble to the May 25, 1983 NPRM, interpreted the section 101(10)(I) provision to exempt only those activities or materials that are authorized

[3] In support of the final rule adjusting the RQ for radionuclides (to be published in 1988), the Agency has prepared an Economic Impact Analysis that estimates the cost to the government and regulated community caused by the revised radionuclide RQ reporting requirements. This document is available for public inspection in Room LC-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (Docket Number 102RQ-RN).

specifically by State law, rather than those that are not prohibited by State law. This interpretation ensures that the appropriate authorities have consciously considered and intentionally authorized the injection activities and materials that are to be exempt from notification requirements and that the National Response Center will be made aware immediately of the potential need to respond to releases that have not been evaluated previously by a permitting authority.

EPA interprets the section 101(10)(I) exemption to apply only to those materials specifically authorized by State law to be used in activities whose sole purpose is the production of crude oil, natural gas, or water; the recovery of crude oil or natural gas; or the reinjection of fluids brought to the surface from such production. Some commenters objected to this interpretation and instead supported a broader interpretation that would exempt from CERCLA notification all materials used in gas and oil field operations. The National Response Center must be notified in any situation involving the use of injection fluids or materials that are not authorized specifically by State law for purposes of the development of crude oil or natural gas supplies and resulting in a release of a hazardous substance in an amount that equals or exceeds the applicable RQ. This will allow an immediate evaluation of the need for a response.

*Introduction of Pollutants into Publicly Owned Treatment Works.* A release to a Publicly Owned Treatment Works (POTW) is subject to the federally permitted release exemption if the release is (1) in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c), and (2) into a POTW with an approved local pretreatment program or a § 403.10(e) State-administered local program. One of the commenters on the May 25, 1983 NPRM suggested that the Agency broaden its approach to the POTW exemption to provide that the discharge be in compliance only with general pretreatment requirements and not with site-specific requirements. The Agency believes that for POTW to be considered "federally permitted," not only must the hazardous substance be a pollutant specified in applicable pretreatment standards and the release of the pollutant be in compliance with the categorical pretreatment standards, but the release also must be in compliance with the local limits developed on the basis of the site-specific conditions, because the categorical standards alone may not be adequate to address the impact of pollutants on the POTW. Therefore, even though a release into a POTW is in compliance with the categorical pretreatment standards, the National Response Center must be notified if the release exceeds the local limits by an RQ or more, because the release may cause interference with the POTW's processes or may pass through the POTW to the navigable waters, either of which may result in a situation requiring an emergency response. This exemption applies only to industrial users [4] discharging to POTWs; a POTW is subject to CERCLA reporting and liability provisions if its discharge of a hazardous substance violates its NPDES permit by an RQ or more. POTWs are not required to report hazardous substances that are traveling through their collection systems in quantities that equal or exceed RQs; however, the industrial user is responsible for reporting such releases into the collection system.

Sections 307(b)(1) and (c) of the CWA direct EPA to establish pretreatment standards "to prevent the discharge of any pollutant through treatment works * * * which are publicly owned, which pollutant interferes with, passes through, or is otherwise incompatible with such works." These sections address the problems created by discharges of pollutants from nondomestic sources to municipal sewage treatment works that interfere with the POTW or pass through the POTW to navigable waters untreated or inadequately treated. Pretreatment standards are intended to prevent those problems from occurring by requiring nondomestic users of POTWs to pretreat their wastes before discharging them to the POTW. In 1977, Congress amended section 402(b)(8) of the CWA to require POTWs to help regulate their industrial users by establishing local programs to ensure that industrial users comply with pretreatment standards.

In establishing the national pretreatment program to achieve these pretreatment goals, the Agency adopted a broad-based regulatory approach that implements the statutory prohibitions against pass through and interference at two basic levels. The first is through the promulgation of national categorical standards that apply to certain industrial uses within selected categories of industries that commonly discharge toxic pollutants. Categorical standards establish numerical, technology-based discharge limits derived from an assessment of the types and amounts of pollutant discharges that typically interfere with or pass through POTWs with secondary treatment facilities.

The potential for many pass through or interference problems depends not only on the nature of the discharge but also on local conditions (e.g., the type of treatment process used by the POTW, local water quality, POTW's chosen method for handling sludge), and thus needs to be addressed on a case-by-case basis. Examples of such problems include discharges to a POTW that may consist of pollutants not covered by a categorical standard or from nondomestic sources that are not in one of the industrial categories regulated by the categorical standards. Because categorical standards are established industry-wide, they cannot consider site-specific conditions and therefore may not be adequate to prevent all pass through and interference even for the regulated pollutants. EPA's General Pretreatment Regulations (40 CFR Part 403) address these areas of concern. First, 40 CFR 403.5(b) establishes specific prohibitions that apply to all nondomestic users and are designed to guard against common types of pollutant discharges that may result in interference and pass through (e.g., no discharge of flammable, explosive, or corrosive pollutants). Second, 40 CFR 403.5(a) establishes a general prohibition against pass through and interference that serves as a backup standard to address localized problems that occur. In addition, POTWs must develop and enforce specific local limits as part of their local pretreatment programs to prevent pass through and interference. POTWs not required to develop pretreatment programs also must develop local limits if they have recurring pass through and interference (see 40 CFR 403.5(c)).

The pretreatment standards a POTW user must meet to claim the federally permitted release exemption include both applicable national categorical standards and standards established by local law as described below. Compliance only with the general and specific prohibitions (40 CFR 403.5(a) and (b)) of the general pretreatment regulations is insufficient to qualify a release as federally permitted.

Only local limits applicable to the pollutant, developed in accordance with 40 CFR 403.5(c), and designed to implement the general prohibition against interference and pass through (§ 403.5(a)), can qualify the release of such pollutant as a federally permitted

[4] "Industrial users," as the term is used in this discussion, includes mobile sources discharging hazardous substances to a POTW.

release. The development of local limits under 40 CFR 403.5(c) involves three basic steps. First, a POTW must determine which, if any, of the pollutants discharged by its industrial users have a reasonable potential to pass through or interfere with the POTW. For each of the pollutants the POTW concludes may be of concern, the POTW must then determine the maximum amount of the pollutant it can accept (maximum headworks loading) and still prevent the occurrence of pass through or interference. Finally, after maximum allowable headworks loadings are determined for each of the pollutants of concern, the POTW must implement a system of local limits applicable to industrial users to assure that these loadings will not be exceeded.

EPA believes that only local limits that have been developed based upon procedures that evaluate the site-specific characteristics and treatment capabilities of a POTW should qualify the release of the pollutant for the exemption. Such an extensive analysis is needed to assure that pass through and interference problems do not arise. A discharge of a pollutant by an industrial user in compliance with a local limit not designed using these procedures may not address the statutory prohibitions against pass through and interference or provide the requisite degree of environmental protection to qualify for the federally permitted release exemption.

Thus, a release that exceeds by an RQ or more an applicable categorical pretreatment standard or a local limit developed in accordance with 40 CFR 403.5(c) must be reported. Moreover, the absence of a categorical pretreatment standard or a local limit for a specific pollutant precludes coverage for releases of that pollutant under the federally permitted release exemption. If an industrial user releases an RQ or more of a hazardous substance into a POTW that has not set a local limit for such a substance, or for which there is no limit based on a categorical standard, then the release is not federally permitted and is subject to CERCLA reporting and liability provisions.

Furthermore, the release of a pollutant to a POTW only would qualify for the federally permitted release exemption if (1) the POTW has a local pretreatment program approved by the "approved authority" (as defined in § 403.3(c)), or (2) a State, in lieu of the municipality, is implementing a pretreatment program for that POTW pursuant to 40 CFR 403.10(e).

Section 101(10)(J) provides that the pretreatment program must be "submitted by a State or municipality for Federal approval." The Agency interprets this provision to mean that the program not only must be submitted for approval but must be approved. A strict reading of the statutory language would be contrary to the expressed congressional intent that discharges of hazardous substances into sewer systems qualify as federally permitted releases only if they are authorized under a pretreatment program (S. Rep. No. 848, 96th Cong., 2nd Sess. 48 (1980)). The fact that a POTW has submitted a program for approval does not necessarily mean the program is adequate to control the introduction of pollutants from nondomestic users of the POTW. Such a program may not be approved by the approval authority due to major deficiencies. For the discharge to be a federally permitted release, therefore, it must be specifically regulated in an approved program, a program that the approval authority has determined is consistent with the federally mandated minimum standard.

An approved program may be (1) designed and implemented locally by a POTW and approved by either EPA or an EPA-approved State pretreatment program, or (2) designed and implemented by an EPA-approved State pretreatment program. EPA approval of a State pretreatment program pursuant to section 402(b) of the CWA would not automatically qualify a release to a POTW in that State as federally permitted. The local pretreatment program must be approved either by EPA or by an EPA-approved State program. Generally, EPA approval of a State pretreatment program merely changes the approval authority for the POTW programs from EPA to the EPA-approved State pretreatment program. The approved State has primary responsibility for requiring local POTWs to develop and implement a pretreatment program to regulate users directly. The fact that a State pretreatment program has been approved by EPA does not in and of itself change the quality or approvability of local POTW programs. POTWs in approved States would still need to develop local pretreatment programs and receive pretreatment program approval if they have not done so already. Thus, to satisfy the federally permitted release exemption, individual approval of each POTW pretreatment program is necessary (except for a State administered § 403.10(e) program as described below).

Section 403.10(e) allows the State in lieu of the POTW to assume responsibility for developing and implementing POTW pretreatment program requirements. Because the § 403.10(e) program must meet the same standard as would be required for pretreatment programs developed by a municipality (§ 403.8(f)), EPA believes that the § 403.10(e) programs are the State pretreatment programs Congress intended to include under section 101(10)(J).

In the event that a State's § 403.10(e) program does not extend to all its POTWs, only those releases to POTWs for which the State has implemented the pretreatment program pursuant to § 403.10(e) would qualify as federally permitted. If a POTW is not regulated directly by its State NPDES program, the POTW nevertheless must implement an approved local pretreatment program in order for the discharges of industrial users to qualify for the federally permitted release exemption.

In summary, for a release to a POTW to be subject to the federally permitted release exemption, the release must be: (1) In compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c), and (2) into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

One of the commenters on the May 25, 1983 NPRM stated that discharges into a POTW are transfers between facilities, not "into the environment," and therefore all discharges into POTWs should be exempt from CERCLA reporting. The commenter's approach to defining "into the environment" is not consistent with the approach in today's proposal. To determine whether its release is federally permitted, therefore, an industrial user should measure its discharge at the point the substance leaves the industrial user's facility. In the case of indirect dischargers, the release should be measured when it leaves the discharger's building. Mobile sources should measure the discharge at the point it is released into the POTW, which will be at the headworks in most cases. Industrial users are not required under CERCLA to conduct monitoring activities different from those required by the applicable pretreatment program.

*Releases of Source, Byproduct, or Special Nuclear Material.* Radionuclides (which include source, byproduct, and special nuclear material) are listed generically under section 112 of the CAA and are therefore considered hazardous substances under CERCLA. CERCLA section 101(22)(C), however, excludes from the definition of "release" the discharge of:

source, byproduct, or special nuclear material from a nuclear incident, as those terms are

defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act, or, for the purposes of section 104 of this title or any other response action, any release of source, byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 [UMTRCA] * * *.

It should be noted that releases of source, byproduct, or special nuclear material from processing sites designated under section 102(a)(1) or section 302(a) UMTRCA are exempted from CERCLA response action provisions but not from reporting requirements under CERCLA section 103.

CERCLA section 101(10)(K) includes within the definition of federally permitted release, releases of source, byproduct, or special nuclear material that comply with the conditions of a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act (AEA). Therefore, releases of source, byproduct, or special nuclear material that exceed the licensed or permitted levels by an RQ or more, and that are not excluded by section 101(22), must be reported immediately to the National Response Center.

Under the AEA, the Nuclear Regulatory Commission is responsible for issuing licenses for the possession and use of source, byproduct, and special nuclear material. States that have entered into an agreement with the Nuclear Regulatory Commission (i.e., Agreement States) are also authorized under the AEA to issue licenses for the possession and use of source, byproduct, or special nuclear material. Releases of source, byproduct, or special nuclear material in compliance with licenses issued by the Nuclear Regulatory Commission or Agreement States are federally permitted releases under CERCLA section 101(10)(K).

The regulations of the Nuclear Regulatory Commission contain several important exemptions from their provisions, some of which are based on the small quantities of material involved or the low levels of radioactivity the materials emit. The Nuclear Regulatory Commission has developed "exempted quantities" for purposes of identifying facilities that are not subject to Commission licensing requirements. These quantities are smaller than the radionuclide RQs and, therefore, releases from these facilities will not be reported under CERCLA. Nevertheless, these releases are not federally permitted under CERCLA and, therefore, these facilities are subject to the CERCLA section 107 liability provisions.

Some releases of source, byproduct, and special nuclear material may comply with licenses, permits, orders, or regulations issued under the AEA through provisions administered not by the Commission or its Agreement States, but by DOE, the Department of Defense, or EPA. For example, DOE governs its radiation protection activities under the AEA by a series of internal orders. When such orders are issued under DOE's AEA authority and releases of source, byproduct, or special nuclear material are in compliance with the applicable order(s), these releases are federally permitted under section 101(10)(K).[5] The Department of Defense issues regulations under the AEA governing weapons and reactors within its jurisdiction, and EPA issues regulations under the AEA for certain operations involving radioactive material (e.g., 40 CFR Parts 190, 191, and 192). Releases of source, byproduct, or special nuclear material in compliance with these regulations are also federally permitted under section 101(10)(K). Any release that is an RQ or more above federally permitted levels, however, would be subject to the CERCLA notification requirements.

Further clarification is needed regarding the applicability of the definition of federally permitted releases to a fourth category of radioactive material called naturally occurring and accelerator-produced radioactive material (NARM). The AEA gives DOE broad authority to control its radiation-related activities and to protect public health and safety and the environment. This authority applies to activities involving NARM, as well as activities involving source, byproduct, and special nuclear material. CERCLA section 101(10)(K) refers, however, only to releases of source, byproduct, and special nuclear material. Thus, it provides no basis for exempting DOE's NARM releases from CERCLA's reporting and liability provisions. Furthermore, the AEA currently does not give authority to the Nuclear Regulatory Commission to license NARM, only source, byproduct, and special nuclear material. Although Agreement States may regulate NARM, this regulatory authority is not federally derived. Therefore, releases of NARM are not considered federally permitted under section 101(10)(K). Certain NARM releases are, however, considered federally permitted under other CERCLA sections. For example, air releases of NARM that are in compliance with NESHAPs are federally permitted under section 101(10)(H).

In making this finding with respect to NARM and the definition of federally permitted releases in section 101(10)(K), the Agency wishes to differentiate between NARM, source material, and byproduct material. Both source and byproduct material are defined under the AEA to include certain naturally occurring radionuclides. Specifically, source material is natural uranium, natural thorium, or ores that contain 0.05 percent or more (by weight) of natural uranium or thorium. Byproduct material is defined to include naturally occurring decay products of uranium or thorium when those decay products are associated with mill tailings. The exclusion of NARM from the definition of federally permitted releases under section 101(10)(K) applies only to those naturally occurring radionuclides that do not qualify as either source or byproduct material. For example, naturally occurring radium used in medical and well logging devices does not meet the definition of source or byproduct material and, therefore, releases of radium from these devices does not qualify for the reporting exemption under section 101(10)(K).

All of the commenters on the radionuclides exemption felt that a broader exemption is warranted. Some commenters suggested that reports of releases currently required by the Nuclear Regulatory Commission are sufficient and comprehensive because they enable the Commission to determine the need for and the adequacy of response. These commenters felt that any additional reports to the National Response Center would be an unnecessary burden. EPA expects that most releases involving radionuclides will be excluded from the definition of release, will be federally permitted, or will involve a quantity smaller than the RQ. (The Agency published a rule that proposed RQs for radionuclides on March 16, 1987 in 52 FR 8172; these RQs are being revised and the Agency expects to publish final RQs for radionuclides in 1988.) EPA believes, however, that the reporting requirements imposed on the remaining releases of radionuclides, including

[5] Under the DOE procurement regulations, provisions of the relevant DOE environmental and safety orders must be incorporated by reference into contracts entered into with managers and operators of DOE facilities (see 48 CFR 970.2303-2, 970.5204-2, 970.5104-26(b)). By virtue of their incorporation into binding contracts, the provisions of the DOE orders become binding on the managers and operators of DOE facilities and are enforceable by DOE on the basis of the facility management and operation contracts.

releases not subject to or in compliance with applicable permits, regulations, or orders, are essential to mitigate the risk to public health or welfare or the environment posed by such releases.

## III. Notification for Certain Types of Releases

### *A. In General*

This section addresses several recurring questions not related specifically to the definition of "federally permitted release" but that arise under the CERCLA section 103(a) reporting requirements. One such question involves releases to engineered structures designed specifically to prevent materials from reaching the land surface. The issues involve both interpretation of the phrase "release into the environment" and the appropriateness of CERCLA notification requirements for releases to such secondary containment devices. The Agency solicits comments on the following issues.

In the preamble to the April 4, 1985 final rule adjusting RQs for 340 CERCLA hazardous substance, EPA stated:

> Hazardous substances may be released "into the environment" even if they remain on plant or installation grounds. Examples of such releases are spills from tanks or valves onto concrete pads or into ditches open to the outside aid, releases from pipes into open lagoons or ponds, or any other discharges that are not wholly contained within buildings or structures. Such a release, if it occurs in a reportable quantity (e.g., evaporation of an RQ into the air from a dike or concrete pad), must be reported under CERCLA. On the other hand, hazardous substances may be spilled at a plant or installation but not enter the environment, e.g., when the substance spills onto the concrete floor of an enclosed manufacturing plant. Such a spill would need to be reported only if the substances were in some way to leave the building or structure in a reportable quantity. (Note, however, that the federal government may still respond and recover costs where there is a threatened release into the environment.) 50 FR 13462.

In applying the phrase "into the environment" to releases to secondary containment devices, EPA believes that a release inside a building or structure is not a release "into the environment" unless the spilled substance leaves the building.

On one hand, a release to a secondary containment device that is not wholly contained and that is located outside of a building or structure is "into the environment." Examples of releases to such devices that illustrate both the potential for a serious problem and an existing serious situation have been brought to the Agency's attention. These include a release of hydrochloric acid to a dike that would have overflowed in a heavy rain, and radioactive contamination of water supplies apparently resulting from an improperly functioning secondary containment device at a nuclear facility.

On the other hand, it has been suggested that where engineered structures are open to the air, releases into such structures should be exempt from CERCLA notification unless an RQ or more of the substance reaches any ground or surface waters or land surface or evaporates into the ambient air. Releases to such structures may include such occurrences as releases onto concrete pads, secondary containment devices with sealed floors around storage tanks, or drip pans used to catch minor hose or line drainage.

The Agency is interested in receiving comments and data discussing the circumstances under which immediate notification of releases into secondary containment devices would not provide useful information for Federal response purposes under CERCLA. EPA is particularly interested in information on the significance of the issue, specific examples of procedures followed where there is a release to a secondary containment device and techniques used to prevent releases from such devices, data discussing the integrity of secondary containment devices, and suggestions on the appropriate means of eliminating any such unnecessary reporting. If the Agency decides to exempt from CERCLA notification certain releases into secondary containment devices, a demonstration may be required to show that the device is sufficiently protective and reliable.

### *B. PCB Waste Disposal*

A second issue concerning the necessity for section 103 notification is whether approved polychlorinated biphenyl (PCB) disposal by incineration, landfilling, or alternate methods needs to be reported as a release under section 103. Because PCB disposal approvals under the Toxic Substances Control Act (TSCA) are not included in the CERCLA section 101(10) definition of federally permitted release, EPA does not believe that it has the authority to apply that exemption to such approvals.

At the same time, however, EPA does not believe that notification under section 103 of CERCLA provides any significant additional benefit so long as the disposal facility is in substantial compliance with all applicable regulations and approval conditions. The PCB regulations under TSCA, 40 CFR Part 761, require owners or operators of PCB disposal facilities, incinerators, chemical waste landfills, and high efficiency boilers to obtain written EPA approval, based on compliance with detailed technical requirements designed to ensure proper disposal, before accepting PCB wastes. The TSCA approval process is designed to ensure that the operation of PCB disposal facilities does not present an unreasonable risk of injury to health or the environment from PCBs. In addition, 40 CFR Part 761, Subpart J, requires PCB disposal facility owners or operators to monitor carefully the facility's inventory and operation, maintain detailed records for periods of 5 to 20 years, and report under certain circumstances. The TSCA regulations provide the Federal government with the information necessary to determine whether an emergency response to a PCB disposal is required. Today's proposal not to require CERCLA reporting for EPA-approved PCB disposals is consistent with the overall objective of the CERCLA notification requirements. Therefore, EPA will not require reporting under section 103(a) of the approved, proper disposal of PCB wastes into a disposal facility. The Agency requests comments on this proposal to exempt administratively these releases from CERCLA notification.

A party responsible for a release of PCB wastes that need not be reported under CERCLA, however, remains liable for the costs of cleaning up the release and for any natural resource damages caused by the release. In addition, where the disposer knows that the facility is not in compliance with applicable regulations and approved conditions under TSCA, disposal of an RQ or more of PCB waste must be reported to the National Response Center. Likewise, spills and accidents occurring during disposal and outside of the approved operation and that result in releases of an RQ or more of PCB waste must be reported to the National Response Center. Finally, PCB releases of an RQ or more from a TSCA-approved facility (as opposed to disposal into such a facility) must be reported under CERCLA.

## IV. Discharges to POTW's

The Agency recognizes that the regulation implementing CWA section 311 for hazardous substance discharges must be revised to be consistent with the Agency's regulatory approach taken under CERCLA section 101(10)(J). Under CERCLA seciton 101(10)(J), an indirect discharge to a POTW must be subject to and in compliance with categorical pretreatment standards and local limits applicable in an approved local

pretreatment program (see discussion under Section III of today's preamble). All indirect dischargers, ie., both mobile and stationary sources, are subject to the same requirements for their discharges to be considered federally permitted releases.

Under 40 CFR 117.13, mobile sources discharging industrial waste are not subject to CWA section 311 coverage if the mobile source has contracted with, or otherwise received written permission from the POTW to discharge a designated quantity of industrial waste treated to comply with effluent limitations (under CWA sections 301, 302, or 306) or pretreatment standards (under CWA section 307). Indirect dischargers are not addressed under § 117.13. Paragraph (a) of § 117.13 was reserved to provide the conditions under which indirect discharges are subject to CWA section 311.

The Agency is proposing to amend 40 CFR 117.13 to state that indirect discharges are not subject to section 311 coverage if the indirect discharge is in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and is into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program. EPA also is proposing to revise paragraph (b) to apply the same conditions to mobile sources as would be applied to indirect discharges under paragraph (a). The Agency requests comments on this proposal.

## V. Regulatory Analyses

### *A. Executive Order No. 12291*

Rulemaking protocol under Executive Order (E.O.) 12291 requires that proposed regulations be classified as major or nonmajor for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are regulations that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in costs or prices for consumers, individual industries, Federal, States, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Today's regulation is nonmajor, because adoption of the rule will result in zero costs and will not cause any of the significant adverse effects mentioned in (3) above. The Background Document for the Proposed Regulation on Federally Permitted Releases, available for inspection in the public docket, shows that the proposed rule is simply a clarification of existing statutory requirements.

This rule has been submitted to OMB for review, as required by E.O. 12291.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant impact on a substantial number of small entities." Today's proposed rule is not expected to significantly impact small entities because the rule proposes simply to clarify the existing statutory requirement. EPA certifies, therefore, that this proposed regulation will not have a significant impact on a substantial number of small entities and that a Regulatory Flexibility Analysis is not required.

### *C. Paperwork Reduction Act*

There are no reporting or recordkeeping provisions included in this proposed rule that require approval from the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

### List of Subjects

*40 CFR Part 117*

Hazardous Substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 302*

Air pollution control, Chemicals, Hazardous materials transportation, Hazardous substances, Intergovernmental relations, Natural resources, Nuclear materials, Pesticides, and pests, Radioactive materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

*40 CFR Part 355*

Chemical accident prevention, Chemical emergency preparedness, Chemicals, Community emergency response plan, Community right-to-know, Contingency planning, Extremely hazardous substances, Hazardous substances, Reportable quantity, Reporting and recordkeeping requirements, Threshold planning quantity.

Dated: July 11, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the premble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

## PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for Part 117 is revised to read as follows:

**Authority:** 33 U.S.C. 1321 and 1361.

2. Section 117.12 is revised to read as follows:

### § 117.12 Applicability to discharges from facilities with NPDES permits.

(a) This regulation does not apply to:

(1) Discharges in compliance with a permit under section 402 of the Clean Water Act;

(2) Discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit; or

(3) Continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

(b) A discharge is "in compliance with a permit issued under section 402 of the Clean Water Act" if the permit contains an effluent limitation specifically applicabale to the substance discharged or an effluent limitation applicable to another waste parameter that has been specifically identified in the permit as intended to limit such substance, and the discharge is in compliance with the effluent limitation.

(c) A discharge results "from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit" where:

(1) The permit application, the permit, or another portion of the public record contains documents that specifically identify:

(i) The substances and the amounts of substances; and

(ii) The origin and source of the substances; and

(iii) The treatment that is to be provided for the discharge either by:

(A) An on-site treatment system separate from any treatment system treating the permittee's normal discharge; or

(B) A treatment system that is designed to treat the permittee's normal discharge and that is additionally capable of treating the identified amount of the identified substance; or

(C) Any combination of the above; and

(2) The permit contains a requirement that the substances and the amounts of the substances, as identified in §117.12(c)(1)(i) and §117.12(c)(1)(ii), be treated pursuant to § 117.12(c)(1)(iii) in the event of an on-site release; and

(3) The treatment to be provided is in place.

(d) A discharge is a "continuous or anticipated intermittent" discharge "from a point source, identified in a permit or permit application under section 402 of the Clean Water Act," and "caused by events occurring within the scope of relevant operating or treatment systems", whether or not the discharge is in compliance with the permit, if:

(1) The hazardous substance is discharged from a point source for which a valid permit exists or for which a permit application has been submitted; and

(2) The discharge of the hazardous substance results from:

(i) The contamination of noncontact cooling water or storm water, provided that such cooling water or storm water is not contaminated by an onsite spill of a hazardous substance; or

(ii) A continuous or anticipated intermittent discharge of process waste water, and where the discharge originates within the manufacturing or treatment systems; or

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

3. Section 117.13 is revised to read as follows:

**§ 117.13 Applicability to discharges from other facilities.**

(a) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from stationary industrial users, so long as the discharge is:

(1) In compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c); and

(2) Into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

(b) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from a mobile source, so long as the mobile source can show that:

(1) Prior to accepting the substance from an industrial discharger, the substance being discharged was in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c); and

(2) The substance is being discharged into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program.

## PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

4. The authority citation for Part 302 is revised to read as follows:

**Authority:** 42 U.S.C. 9602; 33 U.S.C. 1321 and 1361.

5. Section 302.3 is amended by adding in alphabetical order the definition "federally permitted release" and by revising the introductory text of the definition "release" to read as follows:

**§ 302.3 Definitions.**

* * * * *

"Federally permitted release" means

(1) a discharge in compliance with a permit under section 402 of the Clean Water Act;

(2) A discharge resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act and subject to a condition in such permit;

(3) A continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which is caused by events occurring within the scope of relevant operating or treatment systems;

(4) A discharge in compliance with a legally enforceable Federal or State, individual or general permit under section 404 of the Clean Water Act;

(5) A release in compliance with a legally enforceable Federal or State final permit issued pursuant to section 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such a release;

(6) Any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972;

(7) Any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator) pursuant to Part C of the Safe Drinking Water Act;

(8) Any emission of a substance into the air which is named specifically or is included in a specifically named group of substances subject to and in compliance with a permit or control regulation under section 111, section 112, Title I Part C, Title I Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator) when such permit or control regulation is specifically designed to limit or eliminate such emission of a designated hazardous pollutant or a criteria pollutant, including any schedule or waiver granted, promulgated, or approved under these sections;

(9) Any injection of fluids or other materials specifically authorized under applicable State law: solely for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water; solely for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas; or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected;

(10) The introduction of any pollutant into a publicly owned treatment works (POTW) when such pollutant is specified in and in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and into a POTW with an approved local pretreatment program or a 40 CFR 403.10(e) State administered local program; and

(11) Any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or other issued pursuant to the Atomic Energy Act of 1954.

Federally permitted releases do not include releases exempt from regulation under the authority of one of the cited statutes; releases not in compliance with the applicable permit limit or condition, license, regulation, order, standard, or program; or releases into a medium other than that covered in the applicable

permit, license, regulation, order, standard, or program.

* * * * *

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes

* * *

* * * * *

6. Section 302.6 is amended by adding new paragraphs (e) and (f) as follows:

**§ 302.6 Notification requirements.**

* * * * *

(e) Whenever a release of a hazardous substance exceeds its federally permitted level as defined under § 302.3 ("federally permitted release") by a reportable quantity or more, notification shall be made for such release in accordance with the requirements of this section or, if applicable, § 302.8. Where numerical levels for hazardous substances are not specified, any release not in compliance with the terms, related to the character or quantity of the release, of the applicable permit, license, regulation, order, standard or program that equals or exeeds a reportable quantity must be reported to the National Response Center in accordance with this section or, if applicable, § 302.8.

(f) Notification is not required for the disposal of polychlorinated biphenyl (PCB) approved by EPA and in substantial compliance with the applicable Toxic Substance Control Act (TSCA) regulations, 40 CFR Part 761, and approval conditions.

7. Section 302.7 is amended by revising paragraph (a)(3) to read as follows:

**§ 302.7 Penalties.**

(a) * * *

(3) In charge of a facility from which a hazardous substance is released, other than a federally permitted release, in a quantity equal to or greater than that reportable quantity determined under this part who fails to notify immediately the National Response Center as soon as he or she has knowledge of such release or who submits in such a notification any information which he or she knows to be false and misleading shall be subject to all of the sanctions, including criminal penalties, set forth in section 103(b) of the Act.

* * * * *

## PART 355—EMERGENCY PLANNING AND NOTIFICATION

8. The authority citation for Part 355 is revised to read as follows:

**Authority:** 42 U.S.C. 11002 and 11048.

9. Section 355.40 is amended by revising paragraph (a) to read as follows:

**§ 355.40 Emergency release notification.**

(a) *Applicability.* (1) The requirements of this section apply to any facility:

(i) At which a hazardous chemical is produced, used, or stored; and

(ii) At which there is a release of a reportable quantity of any extremely hazardous substance of CERCLA hazardous substance.

(2) This section does not apply to:

(i) Any release that results in exposure to persons solely within the boundaries of the facility;

(ii) Any release that is a "federally permitted release," as defined as follows:

(A) A discharge in compliance with a permit under section 402 of the Clean Water Act;

(B) A discharge resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of the Clean Water Act, and subject to a condition in such permit;

(C) A continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of the Clean Water Act, which is caused by events occurring within the scope of relevant operating or treatment systems;

(D) A discharge in compliance with a legally enforceable Federal or State, individual or general permit under section 404 of the Clean Water Act;

(E) A release in compliance with a legally enforceable Federal or State final permit issued pursuant to section 3005(a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure, or bioassay limitation or condition, or other control on the hazardous substances in such a release;

(F) Any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972;

(G) Any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator) pursuant to Part C of the Safe Drinking Water Act;

(H) Any emission of a substance into the air which is named specifically or is included in a specifically named group of substances subject to and in compliance with a permit or control regulation under section 111, section 112, Title I Part C, Title I Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator) when such permit or control regulation is specifically designed to limit or eliminate such emission of a designated hazardous pollutant or a criteria pollutant, including any schedule or waiver granted, promulgated, or approved under these sections;

(I) Any injection of fluids or other materials specifically authorized under applicable State law: solely for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water; solely for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas; or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected;

(J) The introduction of any pollutant into a publicly owned treatment works (POTW) when such pollutant is specified in and in compliance with applicable categorical pretreatment standards and local limits developed in accordance with 40 CFR 403.5(c) and into a POTW with an approved pretreatment program or a 40 CFR 403.10(e) State administered local program; and

(K) Any release of source, special nuclear, or byproduct material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

(iii) Federally permitted releases do not include releases exempt from regulation under the authority of one of the cited statutes; releases not in compliance with the applicable permit limit or condition, license, regulation, order, standard, or program; or releases into a medium other than that covered in the applicable permit, license, regulation, order, standard, or program.

* * * * *

[FR Doc. 88-16192 Filed 7-18-88; 8:45 am]
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federal register

Tuesday
July 19, 1988

Part III

# Farm Credit Administration

12 CFR Parts 622 and 623

Rules of Practice and Procedure; Practice Before the Farm Credit Administration; Final Rule

FCA Policy Regarding the Assessment of Civil Money Penalties; Notice

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 622 and 623

### Rules of Practice and Procedure; Practice Before the Farm Credit Administration

**AGENCY:** Farm Credit Administration.

**ACTION:** Final rule.

**SUMMARY:** The Farm Credit Administration Board (Board) adopts in final form, amendments to the regulations relating to the definition of a Farm Credit System institution and the imposition of civil money penalties by the Farm Credit Administration (FCA). This action is being taken to implement certain statutory changes to the definition of Farm Credit System institutions and to the changes regarding the imposition of civil money penalties resulting from the enactment of the Agricultural Credit Act of 1987 (1987 Act), Pub. L. 100-233.

It is intended that this action will specify the process and rights afforded to a person or institution to be assessed civil money penalties. Comments from the public have been considered and minor clarifying changes have been made to the proposed rule.

**DATE:** This regulation shall become effective after the expiration of 30 days from publication during which either or both Houses of Congress is in session. Notice of effective date will be published.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Eyer, Chief, Supervision Division, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4455; TDD (703) 883-4444

or

Elizabeth M. Dean, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4020; TDD (703) 883-4444.

**SUPPLEMENTARY INFORMATION:** On May 12, 1988, the FCA published a Proposed Rule (53 FR 16966) seeking public comments on the implementation of the 1987 Act relating to the imposition of civil money penalties and a technical amendment to the definition of Farm Credit System institution. The proposed regulations were also provided to the appropriate committees of the House of Representatives and the Senate for a 30-day review period in accordance with § 5.17 of the Farm Credit Act of 1971, as amended (1971 Act).

The rule implements a provision of the 1987 Act which amends §§ 4.9 and 5.35(3) of the 1971 Act by revoking the Charter of the Farm Credit System Capital Corporation (FCSCC), thereby eliminating FCSCC as a Farm Credit System institution, and by creating the Farm Credit Financial Assistance Corporation, the Federal Agricultural Mortgage Corporation and the Federal Farm Credit Bank Funding Corporation as Farm Credit System institutions. These changes to the statute are reflected in §§ 622.2 and 623.2 of 12 CFR.

The 1987 Act also expands the basis upon which FCA can assess a civil money penalty and requires the agency to solicit the views of the institutions or person to be assessed before imposing a civil money penalty assessment. Therefore, Subpart B of FCA's rules of practice, 12 CFR Part 622 are revised.

The FCA received two comments on the proposed rule, one from the Farm Credit Corporation of America (FCCA) on behalf of its member banks and one from the Farm Credit Banks of Baltimore (FCBB) concurring with the FCC comment. FCBB suggested that there be a minimum time limit of no less than 15 days to respond to FCA with respect to § 622.53 of 12 CFR relating to notification to the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and the solicitation of the written views of the institution or person regarding the imposition of such penalty. Although a minimum time period of 15 days to respond to FCA was considered and discussed, it has been determined that time frames will be set forth in the notification letter on a case-by-case basis. The suggestion of committing to a minimum time frame in the regulation does not provide the administrative flexibility desired by the FCA. Therefore, as previously stated in the preamble to the proposed rule, the FCA will notify the institution or person of the amount of time permissible for a response upon solicitation of their views.

The FCCA comment requested that the notice of assessment of civil money penalties specifically inform the institution or person to be assessed of their statutory right to seek judicial review of an adverse formal hearing determination and that failure to request a formal hearing constitutes a waiver of the right of judicial review. Having considered this comment, § 622.55 of 12 CFR has been modified to reflect the statutory authority, 12 U.S.C. 2268 (c) and (d), which refer to judicial review and the consequences of failing to request a formal hearing. Additionally, paragraph (6) was inserted into § 622.55 of 12 CFR to notify an institution or person to be assessed that failure to request a hearing constitutes a waiver of the opportunity of a hearing and the notice of assessment shall constitute a final and unappealable order.

**List of Subjects in 12 CFR Parts 622 and 623**

Accountants, Administrative practice and procedure, Crime, Investigations, Lawyers, Penalties.

As stated in the preamble, Part 622, Subparts A and B, and Part 623, of Chapter VI, Title 12 of the Code of Federal Regulations are amended as follows:

## PART 622—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 622 is revised to read as set forth below and all other authority citations throughout Part 622 are removed.

**Authority:** Secs. 5.9, 5.10, 5.17, 5.25-5.37, 12 U.S.C. 2243, 2244, 2252, 2261-2273.

2. Section 622.2 is amended by revising paragraph (d) to read as follows:

### Subpart A—Rules Applicable to Formal Hearings

**§ 622.2 Definitions.**

* * * * *

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in § 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation, and any service organization chartered under Part E of Title IV of the Act.

* * * * *

3. Subpart B, §§ 622.51 to 622.60, is revised to read as follows:

### Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

Sec.

## Subpart B—Rules and Procedures for Assessment and Collection of Civil Money Penalties

### § 622.51 Definitions.

Unless noted otherwise, the definitions set forth in § 622.2 of Subpart A shall apply to this subpart.

### § 622.52 Purpose and scope.

The rules and procedures specified in this subpart and in Subpart A are applicable to proceedings by the FCA to assess and collect civil money penalties:

(a) For a violation of the terms of a final cease and desist order issued under § 5.25 or 5.26 of the Act, or

(b) For violation of any provision of the Act or any regulation issued under the Act.

### § 622.53 Notification of alleged violations.

Before determining whether to assess a civil money penalty and determining the amount of such penalty, the FCA shall notify the institution or person to be assessed of the violation(s) alleged to have occurred or to be occurring, and shall solicit the written views of the institution or person regarding the imposition of such penalty.

### § 622.54 Relevant considerations.

In determining the amount of any penalty assessed, the FCA shall consider the financial resources and good faith of the institution or person charged, the gravity of the violation, any previous violations, and such other matters as justice may require.

### § 622.55 Notice of assessment of civil money penalty.

(a) *Notice of assessment.* After considering any written materials submitted in accordance with § 622.53 and the factors stated in § 622.54, the FCA shall commence a civil money penalty proceeding with the issuance of a notice of assessment of a civil money penalty. The notice of assessment shall state:

(1) The legal authority for the assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty shall be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment in accordance with 12 U.S.C. 2268(c) and (d);

(6) That failure to request a hearing constitutes a waiver of the opportunity for a hearing and the notice of assessment shall constitute a final and unappealable order in accordance with 12 U.S.C. 2268(c); and

(7) The time limit to request such a formal hearing.

(b) *Service.* The notice of assessment may be served upon the institution or person being assessed by personal service or by certified mail with a return receipt to the institution's or the person's last known address. Such service constitutes issuance of the notice.

### § 622.56 Request for formal hearing on assessment.

An institution or person being assessed may request a formal hearing to challenge the assessment of a civil money penalty. The request must be filed in writing, within 10 days of the issuance of the notice of assessment, with the Chairman of the Board, FCA, 1501 Farm Credit Drive, McLean, VA 22102-5090.

### § 622.57 Waiver of hearing; consent.

(a) *Waiver.* Failure to request a hearing pursuant to § 622.56 constitutes a waiver of the opportunity for a hearing and the notice of assessment issued pursuant to § 622.55 shall constitute a final and unappealable order.

(b) *Consent.* Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative is deemed to have consented to the issuance of an assessment order.

### § 622.58 Hearing on assessment.

(a) *Time and place.* An institution or person requesting a hearing shall be informed by order of the Board of the time and place set for hearing.

(b) *Answer; procedures.* The hearing order may require the institution or person requesting the hearing to file an answer as prescribed in § 622.5 of Subpart A. The procedures of the Administrative Procedure Act (5 U.S.C. 554-557) and Subpart A of these Rules shall apply to the hearing.

### § 622.59 Assessment order.

(a) *Consent.* In the event of consent of the parties concerned to an assessment, or if, upon the record made at a hearing ordered under this subpart, the Board finds that the grounds for having assessed the penalty have been established, the Board may issue an order of assessment of civil money penalty. In its assessment order, the Board may reduce the amount of the penalty specified in the notice of assessment.

(b) *Effective date and period.* An assessment order is effective immediately upon issuance, or upon such other date as may be specified therein, and shall remain effective and enforceable unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(c) *Service.* An assessment order may be served by personal service or by certified mail with a return receipt to the last known address of the institution or person being assessed. Such service constitutes issuance of the order.

### § 622.60 Payment of civil money penalty.

(a) *Payment date.* Generally, the date designated in the notice of assessment for payment of the civil money penalty will be 60 days from the issuance of the notice. If, however, the Board finds, in a specific case, that the purposes of the statute would be better served if the 60-day period were changed, the Board may shorten or lengthen the period or make the civil money penalty payable immediately upon receipt of the notice of assessment. If a timely request for a formal hearing to challenge an assessment of a civil money penalty is filed, payment of the penalty shall not be required unless and until the Board issues a final order of assessment following the hearing. If an assessment order is issued, it will specify the date by which the civil money penalty is to be paid or collected.

(b) *Method of payment.* Checks in payment of civil money penalties should be made payable to the "Farm Credit Administration". Upon collection, the FCA shall forward the amount of the penalty to the Treasury of the United States.

### §§ 622.61—622.75 [Reserved]

## PART 623—PRACTICE BEFORE THE FARM CREDIT ADMINISTRATION

4. The authority citation for Part 623 is revised to read as set forth below and all other authority citations throughout Part 623 are removed.

Authority: Secs. 5.9, 5.10, 5.17, 5.25-5.37, 12 U.S.C. 2243, 2244, 2252, 2261-2273.

5. Section 623.2 is amended by revising paragraph (d) to read as follows:

### § 623.2 Definitions.

* * * * *

(d) The terms "institution in the System", "System institution" and "institution" mean all institutions enumerated in section 1.2 of the Act, any institution chartered pursuant to or established by the Act, except for the Farm Credit System Assistance Board and the Farm Credit System Insurance Corporation and any service organization chartered under Part E of Title IV of the Act.

* * * * *

Dated: July 12, 1988.

David A. Hill,

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-16514 Filed 7-18-88; 8:45 am]

BILLING CODE 6705-01-M

## FARM CREDIT ADMINISTRATION

## FCA Policy Regarding the Assessment of Civil Money Penalties

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice; Farm Credit Administration policy regarding the assessment of civil money penalties.

**SUMMARY:** The Agricultural Credit Act of 1987 (Pub. L. 100-233), enacted on January 6, 1988, amending the provisions of the Farm Credit Act of 1971, (12 U.S.C. 2001 *et seq.*), provides that the Farm Credit Administration (FCA) may assess civil money penalties for a violation of law or regulation or a final cease and desist order. As a means of promoting consistency in the application of this authority, the FCA has adopted a policy similar to that of the Federal Financial Institutions Examination Council (FFIEC), (45 FR 59423-59424, September 9, 1980). The FFIEC is composed of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration and the Office of the Comptroller of the Currency. The FCA's policy is similar to that of the FFIEC in that it sets forth specific factors that should be taken into consideration in deciding whether, and in what amount, civil money penalties should be imposed. The FCA policy, like the FFIEC policy, does not attempt to establish an inflexible schedule of penalties.

**EFFECTIVE DATE:** July 19, 1988.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Eyer, Chief, Supervision Division, Office of Analysis and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4455, TDD (703) 883-4444

or

Elizabeth M. Dean, Senior Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4444

### FCA Policy Regarding the Assessment of Civil Money Penalties

Under provisions of the Farm Credit Act of 1971, as amended in 1985, (Pub. L. 99-205) enacted on December 23, 1985 and subsequently amended by the Agricultural Credit Act of 1987 enacted on January 6, 1988 (Pub. L. 100-233) (Act), the FCA is authorized to assess civil money penalties for violations of the Act and regulations promulgated thereunder, as well as for a violation of the terms of a final cease and desist order.

The maxmimum civil penalty that may be assessed for violation of a final cease and desist order is $1,000 per day. The maximum civil penalty that may be assessed for violation of the Act or any regulation issued thereunder is $500 per day. Civil money penalties continue for each day a violation continues.

Section 5.32(b) of the Act provides that the FCA solicit the views of the Farm Credit System (System) institution or person to be assessed and consider that party's financial resources and good faith, the gravity of the violation, any history of previous violations, and such other matters as justice may require.

The FCA has amended 12 CFR Part 622, Rules and Procedures for Assessment and Collection of Civil Money Penalties. The FCA, before determining whether to assess a civil money penalty and in determining the amount of such penalty, shall notify the System institution or person to be assessed of the violation of violations alleged to have occurred or to be occurring, and shall solicit the views of the System institution or person regarding the imposition of the civil money penalty.

The FCA procedures provide for the commencement of civil money penalty proceedings with the issuance of a notice of assessment. The notice generally contains:

(1) The legal authority for assessment;

(2) The amount of the civil money penalty being assessed;

(3) The date by which the civil money penalty shall be paid;

(4) The matter of fact or law constituting the grounds for assessment of the civil money penalty;

(5) The right of the institution or person being assessed to a formal hearing to challenge the assessment; and

(6) The time limit to request such a formal hearing.

Under section 5.32 of the Act, the System institution or person against whom a penalty is assessed has the opportunity to challenge the assessment in a formal administrative hearing and, following the hearing, to obtain judicial review of any assessment in the appropriate United States court of appeals.

To provide guidance in the procedures and criteria used by the FCA in the assessment of civil money penalties under the Act, the FCA adopts this policy:

### Considerations in the Assessment of Civil Money Penalties

In assessing a civil money penalty for a violation or violations of provisions under the Act, or regulations implemented thereunder, the FCA is required to consider the size of the financial resources and good faith of the respondent, the gravity of the violation, the history of previous violations, and such other matters as justice may require. In determining the amount of a civil money penalty, the FFIEC believes that a significant consideration should be the financial or economic benefit the respondent obtained from the violation. Accordingly, the FCA, like the agencies comprising the FFIEC, will consider, in addition to the other factors specified in the statute, the financial or economic benefit the respondent derived from the illegal activity. The removal of economic benefit will, however, usually be insufficient by itself to promote compliance with the statutory provisions. The penalty may, therefore, in appropriate circumstances reflect some additional amount beyond the economic benefit derived to provide a deterrent.

In determining whether the violation is of sufficient gravity (i.e., the importance, significance, and seriousness of the situation) to warrant initiating a civil money penalty assessment proceeding, the agencies have identified the following factors as relevant:

(1) Evidence that the violation or pattern of violations was intentional or committed with a disregard of the law or the consequences to the institution;

(2) The frequency or recurrence of violations and the length of time the violation has been outstanding;

(3) Continuation of violation after the respondent becomes aware of it, or its immediate cessation and correction;

(4) Failure to cooperate with the FCA in effecting early resolution of the problem;

(5) Evidence of concealment of the violation, or its voluntary disclosure;

(6) Any threat of or actual loss or other harm to the System, the System institution or the public confidence, and the degree of any such harm;

(7) Evidence that participants or their associates received financial or other gain or benefit or preferential treatment as a result of or from the violation;

(8) Evidence of any restitution by the participants in the violation;

(9) History of prior violations, particularly where similarities exist between those violations and the violation under consideration;

(10) Previous criticism of the institution for similar violations;

(11) Presence or absence of a compliance program and its effectiveness;

(12) Tendency to create unsafe or unsound practices or breach of fiduciary duty; and

(13) The existence of agreements, commitments or orders intended to prevent the subject violation.

The delineation of these factors either singularly or in total, is intended to provide guidance regarding the circumstances under which the FCA may initiate a civil money penalty action and is not intended to preclude the FCA from considering any other matters relevant to the appropriateness of a civil money penalty assessment.

Dated: July 12, 1988.

**David A. Hill,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 88-16153 Filed 7-18-88; 8:45 am]

BILLING CODE 6705-01-M

Federal Register

Tuesday
July 19, 1988

Part IV

# Environmental Protection Agency

40 CFR Parts 260 and 261

Identification and Listing of Hazardous Waste Treatability Studies Sample Exemptions; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 260 and 261**

**[SWH-FRL-3350-4]**

## Identification and Listing of Hazardous Waste Treatability Studies Sample Exemption

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On September 18, 1987, the Environmental Protection Agency (EPA) published a Notice of Data Availability, which requested comment on whether the sample exclusion provision should be expanded to include waste samples used in small-scale treatability studies. The sample exclusion provision exempts from regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) waste samples collected solely for the purpose of monitoring or testing to determine their characteristics or composition. The Notice also presented information and requested comment concerning the appropriate limitations that could be imposed if the sample exclusion were expanded.

As a result of comments received, EPA is today issuing a final rule that conditionally exempts waste samples used in small-scale treatability studies from Subtitle C regulation. Consequently, generators of the waste samples and owners or operators of laboratories or testing facilities conducting such treatability studies will be exempt from the Subtitle C hazardous waste regulations, including the permitting requirements, when certain conditions are met.

**DATE:** This regulation becomes effective on July 19, 1988.

**ADDRESSES:** The OSW Docket is located in the sub-basement at the following address and is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays: EPA RCRA Docket (sub-basement), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (to review docket materials) by calling (202) 475–9327. Refer to Docket number F–88–TSSE–FFFFF when making appointments to review any background documentation for this rulemaking. Copies cost $0.15 per page. Copies of the background document entitled "Summary and EPA Responses to Public Comments on the September 18, 1987 Notice of Data Availability and Request for Comment, and the September 25, 1981 Interim Final Rule" are available for viewing in the OSW Docket Room. For Further documentation and information, see Docket Number F–87–TSEF–FFFFF.

**FOR FURTHER INFORMATION CONTACT:** The RCRA/Superfund Hotline toll free at (800) 424–9346 in Washington, DC, or at (202) 382–3000. For technical information contact Mike Petruska, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–9888.

**SUPPLEMENTARY INFORMATION:**

*Preamble Outline*



### I. Background

On September 25, 1981 (see 46 FR 47426), EPA issued an interim final rule that conditionally exempted from the Subtitle C hazardous waste regulations any waste samples collected solely for the purpose of monitoring or testing to determine their characteristics or composition. These regulations include the generator and transporter requirements of Parts 262 and 263 and the treatment, storage, and permitting requirements of Parts 264, 265, and 270. In particular, the regulations exempt waste samples from the Subtitle C requirements when: (1) The sample is being transported to the laboratory for testing or is being transported back to the sample collector after the testing; (2) the sample is being stored by the sample collector or laboratory before testing or after testing prior to its return to the generator; (3) the sample is being analyzed to determine its characteristics or composition; or (4) the sample is being stored at the laboratory for a specific purpose such as a court case or enforcement action. However, samples subject to the exemption must still comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or other applicable shipping requirements. The sample must be packaged so that it does not leak, spill, or vaporize from its packaging.

The Agency granted this exclusion because of the *de minimis* public health and environmental risks involved. In particular, the Agency found that certain incentives already existed that would assure protection of human health and the environment without requiring these samples to be subject to the full set of Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. These incentives include (1) the costs associated with sample collection, shipping, analysis, and storage; (2) the generator's need to obtain results of analyses to determine if and how they must comply with the RCRA hazardous waste requirements; and (3) the considerable likelihood that a testing laboratory would return the sample to the generator as part of a contractual agreement (partly based on the generator's desire to protect proprietary information and partly based on the testing laboratory's desire to avoid the costs of disposal), reducing the concern that the sample would be indiscriminately disposed. The preamble stated that the exclusion did not cover large-size samples that are used in treatability or other testing at pilot scale or experimental facilities. However, the preamble did not specify whether the exclusion applied to small- or bench-scale treatability studies at laboratories or other testing facilities. Today's final rule directly addresses this issue.

The preamble of the 1981 interim final rule also stated that the Agency had considered and rejected a quantity limit for the samples subject to the exclusion. Its basis for this was that the available information indicated that the size of samples shipped for characterization or analytical purposes usually did not exceed 1 gallon. Therefore, the Agency saw no need to set a specific quantity limit. However, the preamble also stated that EPA would consider imposing a

limit on sample size if comments or experience indicated that such a limit was necessary (46 FR 47427).

While the comments received on the 1981 interim final rule generally supported the exclusion for samples shipped for waste characterization, a large percentage of commenters also recommended that the sample exclusion provision be expanded to include waste samples used in treatability studies, including large-size samples used in pilot-scale units or at experimental facilities.

Furthermore, on June 2, 1987, the Hazardous Waste Treatment Council (HWTC) submitted a rulemaking petition requesting that the Agency promulgate regulations to provide limited exemptions from the permitting requirements of RCRA to facilities conducting treatability studies. The petition proposed a three-part solution: (1) Expand the sample exclusion provision to allow treatability tests to be conditionally exempted from regulation; (2) expand the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) permits exclusion at 40 CFR 300.68(a)(3) to include off-site treatability testing when performed at the direction of an EPA or State on-scene coordinator to implement a response consistent with CERCLA section 121; and (3) issue interim guidance to implement, at least in part, the suggested changes described in (1) and (2) above (*i.e.*, interpret the existing sample exclusion in 40 CFR 261.4(d) to include treatability studies, and issue interim guidance to on-scene coordinators regarding off-site treatability studies). The petition proposed several limitations for small-scale treatability studies. The petition also recommended regulatory changes that would allow large-scale treatability studies to be conducted provided that the facility complies with the manifesting requirements and certain interim status standards. (See section II.C., Limitations, discussed below.)

The petition asserted that immediate regulatory relief was needed because the present RCRA Subtitle C permitting requirements unnecessarily interfere with the experimentation and research necessary to evaluate the various treatment options for CERCLA cleanup activities. HWTC further argued that these same problems will have a similar effect on RCRA corrective action. Agency experience with the Superfund Innovative Technology Evaluation (SITE) program and CERCLA cleanup actions support the HWTC's assertion.

Based on these factors (*i.e.*, comments on the sample exclusion interim final rule, the HWTC petition, and EPA's own experience), EPA published a Notice of Data Availability and Request for Comment on September 18, 1987 (50 FR 35279). The Notice reopened the comment period on the earlier interim final rule and specifically asked whether EPA should expand the sample exclusion provision in 40 CFR 261.4(d) to include waste samples used in small-scale treatability studies. The Notice also presented information and requested comment concerning the appropriate limitations that could be imposed if the sample exclusion provision were expanded.

Almost all commenters to the notice recommended that the Agency expand the sample exclusion provision to include waste samples used in small-scale treatability studies. The commenters generally agreed that the Agency could promulgate such an exclusion and allow meaningful studies to be conducted because of the *de minimis* risk to human health and the environment. However, a number of commenters argued that the limitations discussed in the Notice were overly stringent and suggested that higher limitations be allowed.

Based on the Agency's own experience and the comments received, EPA is today issuing a final rule that conditionally exempts waste samples used in small-scale treatability studies from regulation under Subtitle C of RCRA. The Agency will address the second part of HWTC's petition concerning larger scale studies at a later date. The remainder of the preamble discusses the major comments received on the Notice of Data Availability and EPA's response to them. All other comments, both from the Notice of Data Availability and to the original interim final rule, are discussed in a background document that is available in the docket to this rulemaking. (See EPA RCRA docket address in preceding section.)

## II. Discussion of Major Issues

### *A. Introduction*

A total of 40 comments were received in response to the Notice of Data Availability. The commenters in general agreed with HWTC that the Agency should expand the sample exclusion provision to apply to waste samples used in small-scale treatability studies. However, there was a wide range of opinion as to the scope of activities that should be allowed under the exemption and the appropriate limitations that the Agency should impose. Before discussing these, however, it is appropriate to discuss the need and rationale for today's rulemaking.

#### 1. *Need and Rationale for Today's Rulemaking*

In the Agency's experience, permitting requirements for offsite treatability studies have resulted in delays in evaluating remediation alternatives for both CERCLA site clean-ups and the RCRA corrective action program. Additionally, the current and upcoming Land Disposal Restrictions Program is another factor arguing strongly for a need to develop alternative treatment technologies.

The overriding objective of Congress in the 1984 RCRA Amendments—to reduce land disposal of hazardous wastes—has already resulted both in heavy demands for existing treatment technologies and in increased urgency for developing new and better treatment methods as an alternative to the land disposal of hazardous waste. In addition, developing techniques to minimize the generation of hazardous waste, and to promote recycling and reuse of waste, are all important Agency goals and Congressional mandates. EPA is committed to facilitating research and development activities that will help meet these objectives.

The Agency believes the current regulatory framework that sets forth RCRA permitting requirements for Subtitle C facilities is unnecessarily stringent for regulating certain activities, *e.g.*, small-scale treatability studies. As noted above, comments in 1981 suggested a need to extend the sample exclusion provision to treatability studies because of the low risk and the large benefits of conducting these studies if RCRA permits were not required.

The HWTC petition summarizes this position on behalf of many facilities that conduct treatability studies as part of their research activities. In addition, HWTC stressed that the development of new treatment capacity, needed to meet the demands placed on industry as the land disposal restrictions take effect, is not facilitated by the current regulations. The potential lack of treatment capacity, using either new or improved existing technologies, means that EPA may have to issue additional variances to the land disposal restrictions, posing an increased threat of ground water and surface water contamination.

Maintaining unnecessary regulatory barriers to conducting treatability studies is, therefore, contrary to the Agency's implementation of the mandated land disposal restrictions. Furthermore, these regulatory barriers send the wrong message to the regulated

community. The Agency intends to promote, not defeat, research and development in support of the national objectives to reduce land disposal of hazardous wastes and to increase reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. However, the Agency remains pledged to carry out its primary statutory obligation to ensure that removing regulatory barriers does not result in unwarranted or increased risks to human health and the environment. The Agency has determined that this balance can be properly maintained in promulgating a RCRA exemption for small scale treatability studies.

2. *Determination of De Minimis Risk*

Since Congress passed RCRA in 1976, the Agency has developed and implemented a "cradle to grave" program to protect human health and the environment from the improper management of hazardous wastes. A principal purpose of the RCRA hazardous waste regulations is to ensure that hazardous wastes are safely transported to facilities properly designed and operated to manage these wastes in a manner that will minimize the threat to human health and the environment. Hazardous waste generators, transporters, and owners and operators of treatment, storage, and disposal facilities (TSDFs) each have specific responsibilities for properly managing those wastes defined as hazardous.

The Agency believes that it can exempt hazardous waste that is used in small-scale treatability studies from the RCRA hazardous waste regulations because a number of factors will combine to ensure that the risks to human health and the environment are *de minimis*. These factors include: (1) A limitation on the size of the sample that is exempted; (2) the high cost of collecting and shipping the sample; (3) a limitation on the quantity of waste that can be shipped at any one time; (4) the applicability of the Department of Transportation (DOT), U.S. Postal Service (USPS), or other regulations governing the transportation of hazardous materials; (5) a limitation on the amount of hazardous waste that can be stored at a laboratory or testing facility; (6) a limitation on the amount of hazardous waste that may be processed (*i.e.*, tested in a treatability unit) in any one day; (7) the prohibitive costs involved in conducting legitimate treatability studies as an alternative to commercial treatment and disposal; (8) a limitation on the time that a waste sample used in a treatability study or any residues generated from such studies may remain at the laboratory or testing facility without being subject to the hazardous waste regulations; (9) the RCRA requirement that any unused sample and residues from a treatability study must still be managed as a hazardous waste (if, in fact, it is still hazardous); and (10) certain reporting and recordkeeping requirements that will enable the Agency to conduct inspections and bring enforcement actions against persons who abuse this exemption. In addition, regulations and requirements administered by other Federal agencies such as the Occupational Safety and Health Administration (OSHA) also ensure proper management.

The Agency believes that all the above factors contribute to an argument for *de minimis* risk. Some factors, such as the sample size, shipment size, transportation standards, and storage limitations, directly relate to the *de minimis* risk in each phase of the treatability study process. Other factors such as the recordkeeping and reporting requirements and the one-time 1000 kg per waste stream limitation ensure that treatment and disposal of hazardous waste do not occur under the guise of conducting treatability studies.

More specifically, under the conditional exemption being promulgated today, the generator or sample collector may not ship more than one of the following in any single shipment: (1) 1000 kg of non-acute hazardous waste; (2) 1 kg of acute hazardous waste (see 40 CFR 261.33(e)); or (3) 250 kg of acute hazardous waste that is contained in contaminated soils, water, or some other contaminated medium. Since the shipments remain subject to DOT, USPS, or other applicable shipping regulations, they must be packaged and labeled in the same manner as other shipments of hazardous materials. One difference is that these waste samples will not require a manifest. EPA believes that a manifest is not required in this situation, since the generator is spending large sums of money to obtain the results of a treatability study. Thus, it is highly unlikely that the sample would be indiscriminately disposed. Furthermore, the generator or sample collector is likely to have a contractual arrangement with the laboratory or testing facility conducting the treatability study either to have the facility return any unused sample and/or any residues that are generated from the treatability study for subsequent manifesting and shipment to a designated facility (see 40 CFR 260.10) or recycling facility or to have the laboratory or testing facility directly manifest and ship the wastes to an appropriate designated facility within specified time limits. Unless the context otherwise requires, the use of this term in today's preamble and rule does not imply that the facility is required to be permitted or to have interim status. The generator must also maintain copies of the shipping papers and the contract with the testing facility for a period ending 3 years from the completion date of the study.

The operator of a vehicle transporting waste samples is still required to comply with the applicable DOT requirements, including notification of the National Response Center in the event of a hazardous material spill of more than a reportable quantity and initiation of cleanup measures in accordance with 49 CFR 171.15.

Owners and operators of a laboratory or testing facility conducting such treatability studies must comply with the limitations regarding shipment, storage, treatment rate, and disposition of unused sample and residues after completion of the studies. The overall limitations on storage and treatment rates, discussed later in today's preamble, are sufficiently restrictive to compel a laboratory or testing facility to carefully coordinate the size and timing of treatability sample shipments. The owners and operators of these laboratories or testing facilities must also comply with applicable regulations promulgated by OSHA.

Further business and financial incentives compelling a laboratory or testing facility to properly handle these samples include the cost-intensive nature of conducting treatability studies, the need to provide the client with documented test results, the desire of the laboratory or testing facility to maintain its corporate reputation, and the desire to avoid any liability. After the treatability study is completed, the owners or operators of a laboratory or testing facility must either return the unused sample and residues to the generator or manifest and ship them to a RCRA designated facility (if the material is a RCRA hazardous waste) within the time limitations specified. A laboratory or testing facility not operating within these limitations must comply with the appropriate RCRA requirements.

Finally, the Agency is stipulating recordkeeping and reporting requirements that will document compliance with the limitations and will allow the Agency to take enforcement action against persons who attempt to abuse the exemption. The specific reporting and recordkeeping

requirements are discussed later in today's preamble.

*B. Scope of the Exemption*

1. Definition of Treatability Study

In the Notice of Data Availability, the Agency included a definition of "treatability study" similar to that proposed by HWTC. According to this definition, a treatability study is one in which a relatively small amount of hazardous waste is subjected to a known treatment process to determine the following: (1) Whether the waste is amenable to a treatment process; (2) what pretreatment (if any) is required; (3) the optimal process conditions needed to achieve the desired treatment; (4) the efficiency of the treatment process; or (5) the characteristics and volume of residuals from a particular treatment process. (See 52 *FR* 35280.)

The commenters generally agreed with the definition of treatability study. However, many commenters expressed concern that the use of the term "known treatment process" was overly restrictive and might hinder the development of innovative technologies. Thus, these commenters recommended that the word "known" be deleted from the definition in the final rule. HWTC's proposed regulatory language did not include a restriction to "known" technologies.

The Agency agrees with these commenters. As stated earlier, it is important to promote the development of treatment technologies that will reduce the land disposal of hazardous waste and increase the reliance on waste minimization and treatment technologies that reduce risk to human health and the environment. In so doing, EPA does not want to restrict industry to the technologies that are already established or "known"; rather, it wants to promote the development of innovative technologies. Therefore, the Agency has modified the definition of "treatability study" accordingly. At the same time, it is concerned that the treatability study sample exemption may be improperly used as a means to avoid regulation when regulation is warranted. To prevent this, EPA has included specific language in the definition of treatability study to guard against such abuse. This language makes it clear that the exemption is for the evaluation of a treatment process and is not to be used for commercial treatment or disposal of hazardous waste. Furthermore, the Agency emphasizes that the definition of treatability studies covered under the exemption does not apply where the practice could result in a significant uncontrolled release of hazardous constituents to the environment. It would, therefore, include neither open burning nor any type of treatment involving placement of a hazardous waste on the land (*e.g.*, in situ stabilization).

Several commenters also suggested that the Agency list, in the rule, the types of treatment studies to be included in the final definition. Although the Agency can see some merit in this suggestion, it has decided not to incorporate a specific list into the regulations. EPA believes that such a list could hinder the development of innovative technologies. For example, if it included a list in the rule, the Agency would be required to go through rulemaking before new or innovative treatment technologies would get the benefit of the treatability exemption. As previously discussed, the Agency believes that as long as the limitations imposed in today's rule are met, any treatability study will pose a *de minimis* risk. Examples of the types of treatability studies included in the exemption are physical/chemical/biological treatment, thermal treatment (incineration, pyrolysis, oxidation, combustion) solidification, sludge dewatering, volume reduction, toxicity reduction, and recycling feasibility.

2. Inclusion of Liner Compatibility and Other Studies

In the Notice of Data Availability, the Agency solicited comment as to whether the exemption should include other waste testing studies, such as liner compatibility studies. Many commenters agreed that the exemption should be expanded to include other types of studies. The commenters argued that, in addition to liner compatibility studies, the exemption should also include studies of corrosion, toxicological and health effects, and other material compatibility studies (*e.g.* pumps and personal protective equipment). While such studies are not strictly treatability studies under the proposed definition, the commenters argued that waste testing is necessary to develop improved hazardous waste management technologies.

The Agency agrees with the commenters that such studies, although not strictly treatability studies, are necessary for the further development of hazardous waste management technologies. Furthermore, the Agency believes that such studies can be conducted using small quantities of hazardous waste under laboratory conditions. Also, these types of studies are subject to the same financial and business incentives for safe handling as are treatability studies. Therefore, with the imposition of the limitations in this final rule, these studies will involve only *de minimis* risk and need not be subject to RCRA permitting regulations. The Agency is, therefore, allowing the following types of studies to be conducted and exempted under the hazardous waste regulations: liner compatibility studies, corrosion studies, toxicological and health effects studies, and other material compatibility studies (*e.g.*, relating to leachate collection systems, geotextile materials, other land disposal unit requirements, pumps and personal protective equipment).

3. Effects on Exporters of Hazardous Waste

EPA, in today's rule, is exempting samples sent for treatability studies from Subtitle C requirements. These include the requirement to notify EPA prior to export of hazardous waste (40 CFR 262.50 *et seq.*). At the time export requirements were promulgated, EPA discussed in the preamble its rationale for allowing the export, without notification, of wastes exempt from manifesting requirements (51 FR 28664, August 8, 1986). In this discussion on export notification requirements, EPA specifically focussed on the sample exemption in 40 CFR 261.4(d).

The rule promulgated today expands the scope of this exemption as contemplated in 1986. For the same reasons discussed in the August 8, 1986, rule relating to § 261.4(d) samples (51 FR 28664 *et seq.*), exporters of treatability study samples who comply with the limitations of today's rule are also exempt from the export notification requirements of Subpart E of Part 262.

While the Agency is exempting these treatability study samples from the export notification requirements at this time, the Agency is revisiting the question as to whether it should exclude unmanifested waste from the export notification requirements and may modify its position in the future.

*C. Limitations*

In the Notice of Data Availability, the Agency requested specific comment on what types of limitations should be placed on the exemption if it were to be expanded to include treatability studies. In addition, EPA specifically requested comment on the limitations suggested by the HWTC in its petition. The HWTC suggested quantity limits for shipping, storage, and treatment of hazardous waste samples for the purpose of conducting a treatability study. In particular, the Notice suggested the following limits: (1) No shipment may

exceed 250 kg; (2) no more than 1000 kg of exempted waste (including residues derived from the treatability study) may be present at the laboratory or testing facility conducting the treatability study at any one time; and (3) no more than 250 kg of exempted waste may be introduced into the treatability study in any one day.

A wide range of opinions concerned appropriate limitations that would provide for meaningful treatability studies. While most commenters believed that the limitations they suggested were necessary to conduct treatability studies, no commenters provided data indicating that their suggested limits were protective of human health and the environment. The following indicates the range of quantity limits proposed by commenters for shipment, treatment, and storage:

Shipment:
- mean quantity: 554 kg
- standard deviation: 794 kg
- range: 250 to 4000 kg
- most frequently cited suggestion: 250 kg

Treatment:
- mean: 448 kg
- standard deviation: 417 kg
- range: 250 to 2000 kg
- most frequently cited suggestion: 250 kg

Storage:
- mean: 2000 kg
- standard deviation: 2285 kg
- range: 250 to 10,000 kg
- most frequently cited suggestion: 1000 kg

Many commenters were supportive of the limitations suggested by HWTC in its petition. However, some commenters argued that the limitations suggested in the notice were not sufficient; although these commenters provided no data suggesting that their limits were protective of human health and the environment, they maintained that larger quantities of waste sample were necessary to conduct treatability studies. In particular, some commenters argued that the storage limitations were unnecessarily restrictive. Additionally, some commenters urged that a higher treatability study limit was necessary as some of the treatability tests required quantities of waste in excess of 1000 kg. Finally, some commenters recommended that the Agency include a mechanism for approval of case-by-case variances from the HWTC quantity limitations or the quantity limitations ultimately chosen.

Nevertheless, all commenters generally agreed that suitable limitations combined with economic forces would prevent the exemption from becoming a means to circumvent the RCRA Subtitle C regulations for treatment and disposal of hazardous waste. Additionally, many commenters noted that it would not be economically feasible for a person to perform an endless series of tests, since treatability study costs are much higher than commercial treatment or disposal costs on a per pound basis. In particular, Shirco (TSEF–001) stated that most treatability tests had unit costs greatly in excess of costs associated with treatment and disposal options. Shirco cited an example where treatability study costs were about $1,000 per pound versus $0.80 to $1.20 per pound for disposal at a commercial facility. Numerous other commenters stated that the high costs associated with performing treatability studies would render invalid any concern the Agency had that the exemption could become a "loophole" in the RCRA Subtitle C regulations.

The Agency believes that the limitations established in this exemption will ensure that it does not become a "loophole" and will ensure *de minimis* risk so that no significant threat to human health and the environment will occur. The following sections discuss the limits selected by the Agency and present the rationale for the limitations adopted.

1. Quantity Limits per Waste Stream per Treatment Process

In response to the Notice of Data Availability, several commenters recommended that limits should be set for each generated waste stream to guard against the possibility that generators and facilities might conduct a plethora of treatability studies in lieu of hazardous waste treatment or disposal. While data was provided that would suggest this would not happen, the Agency has decided that some limitations should be imposed as an extra precaution. Thus, to avoid the potential for such an abuse, the Agency has first made it clear in the definition of "treatability study" that the exemption is for the evaluation of a treatment process and is not to be utilized as a commercial treatment option. In addition, the Agency has placed limits on the amount of waste that can be subject to a treatability study evaluation per generated waste stream. Thus, the rule provides for an exemption of 1000 kg of non-acute hazardous waste per waste stream per treatment process; 1 kg of acute hazardous waste per waste stream per treatment process; or 250 kg of soils, water, or debris contaminated by acute hazardous waste per waste stream per treatment process. The Agency, in making this decision, realizes that a generator may need to evaluate alternative treatment processes for a particular waste stream. EPA believes that the limits set will be adequate to allow sufficient studies to be conducted. Furthermore, the quantity limits are consistent with other limits discussed elsewhere in today's preamble.

The Agency is broadly defining "waste stream" such that a waste stream and the quantity limit are not based on the EPA waste code alone; rather, the Agency will interpret and apply the quantity limit for each medium or physical form in which the waste appears. The Agency believes that this broad interpretation is necessary since each medium (*i.e.*, soils, water, or debris) might require a different treatability study and may need to be shipped to a different laboratory or testing facility for such studies to be conducted. The Agency is also broadly defining "treatment process" to allow a generator to evaluate various alternative approaches. For example, a generator could send 1000 kg of non-acute hazardous waste, or 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each generated waste stream to a number of different processes: biological treatment, incineration, fixation, etc. As allowed by this exemption, the generator or sample collector would be limited to a total of 1000 kg of nonacute hazardous waste of a particular waste stream to investigate alternative fixation processes (or, as applicable, 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste). The Agency has selected the above limits recognizing that in some instances there may be a need to evaluate alternative treatment processes. Finally, the Agency has decided not to put any limits on the number of treatability studies that a laboratory or testing facility can perform per year. However, if this proves to be a problem, the Agency may consider additional regulations.

As noted above, some commenters suggested that higher quantity limits are necessary in order to evaluate certain treatability study processes or that additional amounts of waste may be necessary in instances where unforeseen circumstances have affected the results of all or part of a treatability study evaluation. They suggested that case-by-case allowances in excess of the amounts specified above should be made available if need can be demonstrated. The Agency agrees that some flexibility should be made

available to allow studies to be completed properly. However, the Agency wishes to ensure that adequate controls are placed on all such evaluations to protect human health and the environment. Accordingly, the Agency has included a provision that allows the Regional Administrator to grant requests for waste stream quantity limits in excess of those specified above, up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, and debris contaminated with acute hazardous waste. The Regional Administrator shall only allow additional quantities of hazardous waste when it can be demonstrated that one of the following circumstances or situations exist: (1) That there has been an equipment or mechanical failure and that additional waste is needed to conduct a study; (2) that there is a need to verify the results of a previously evaluated treatment process; (3) that there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or (4) that there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. These adjustments may be authorized only if the 1000 kg (or 250 kg for soils, water, or debris contaminated with acute hazardous waste, or 1 kg for acute hazardous waste) quantity limit per waste stream per treatment process has been subjected to a treatability study evaluation and insufficient data are available to properly design a treatment process. When authorizing additional quantities, the Regional Administrator will only authorize adjustments for the minimum quantity necessary to complete the treatability study evaluation. The Agency believes that most treatability studies can be completed utilizing an extra 250 kg of sample or less, and only in unusual circumstances will quantities greater than 250 kg be required.

Generators and/or sample collectors seeking such an authorization for additional quantities must furnish sufficient information to the Regional Administrators to verify that they have met the conditions allowing for quantity adjustments. Generators and/or sample collectors will be required to submit, in writing, the specific reason why an additional quantity of sample for the treatability study evaluation is necessary (*i.e.*, one of the four situations described above). He or she shall also provide: (1) Verification of the additional quantity necessary; (2) documentation accounting for all samples of hazardous waste from the waste stream which have previously been sent for treatability study evaluation; (3) a description of the technical modifications or change in specifications which will be evaluated and the expected results; and, (4) if further study is being required due to equipment or mechanical failure, the generator and/or sample collector must include information from the laboratory or testing facility indicating what handling procedures or equipment improvements have been made to protect against further breakdowns.

The Regional Administrator may perform or require additional analyses and investigations as are necessary to determine the minimal amount of additional waste necessary to conduct the study and yield the additional data necessary to properly design and/or evaluate the performance of the treatment process.

2. Transportation Shipment Limits—Generator and Facility

The HWTC, in its petition, suggested that shipments of waste samples weighing less than 250 kg (approximately one standard 55-gallon drum) should be exempted when such samples are being shipped for the purpose of conducting treatability studies. The petition also recognized that larger size samples might be necessary for conducting treatability studies on contaminated soils or water; hence, the HWTC recommended that a provision for exempting larger size samples should be available. A number of commenters indicated that the 250-kg shipment limit was too restrictive and suggested that the limit be increased to 1000 kg. These commenters argued that the risk associated with shipping a larger amount (*e.g.*, 1000 kg) is no greater than that associated with four shipments of 250 kg each when one considers the potential for transportation accidents.

After careful consideration of all the issues, the Agency has decided to set a single shipment limitation of 1000 kg of non-acute hazardous waste; 1 kg of acute hazardous waste; or 250 kg of soils, water, or debris contaminated with acute hazardous waste. These shipment limitations (which, in effect, govern the exemption from the RCRA hazardous waste transporter regulations and manifesting requirements) will apply to the shipment of waste samples from the generator or sample collector to the laboratory or testing facility when such samples are being sent for the purpose of conducting a treatability study. The exemption will also apply when unused waste samples and residues generated by the treatability study are returned to the generator or sample collector following completion of the study.

The Agency is setting this limit to be consistent with the quantity limits set on generators for the amount of waste that can be subject to the treatability study sample exemption as discussed in the previous section. The Agency agrees with commenters that the risk associated with shipping the maximum limit of 1000 kg is no greater than that associated with four shipments of 250 kg each. However, it also believes these levels will pose *de minimis* risk.

In addition, as already discussed, the Agency believes other factors exist that will ensure safe delivery of the waste samples to and from the laboratory or testing facility. For example, the waste samples will still be subject to the applicable DOT or USPS regulations regarding shipment of hazardous materials. If the shipments do not fall under DOT or USPS jurisdiction, the generator or sample collector and the laboratory or testing facility must follow the requirements for labeling and packaging as set forth by EPA in this amendment. The requirements state that a sample must be packaged so that it does not leak, spill, or vaporize from its packaging. In addition, the following information must accompany the sample: (1) The sample collector's name, address, telephone number, and EPA identification number; (2) the laboratory or testing facility's name, mailing address, telephone number, and EPA identification number; (3) the quantity of the sample; (4) the date of shipment; and (5) a description of the sample. Finally, the Agency believes that most shipments will be considerably smaller than the limit, since other forces, such as storage limits and treatment rates at the laboratory or testing facility, will require careful control of the amount of waste shipped to the laboratory or testing facility. The costs to conduct the study and to collect, pack, and ship the sample will tend to limit the sample size to the smallest amount practicable.

3. Treatment Rate Limit

The HWTC, in its petition, suggested that the treatment rate limit should be 250 kg per day per laboratory or testing facility. Many of the commenters agreed; however, others argued that the limit should be larger and that it should be based on either the number of treatment units or the number of treatment processes that the laboratory or testing facility was capable of conducting. For example, if a facility was capable of conducting several soil fixation studies or biological treatment studies at one

time, then the limit should be 250 kg per process. Other commenters argued for even higher limits, indicating that it should be 250 kg per unit.

After reviewing the available information and considering the comments, the Agency has adopted a treatment rate limit of 250 kg per day of "as received" waste for the entire laboratory or testing facility. The term "as received" has been chosen by the Agency because some of the treatment processes involve the addition of non-waste material to reduce the environmental mobility of hazardous constituents. "As received" refers to the waste shipped by the generator or sample collector as it arrives at the laboratory or testing facility. Based on the information provided by the HWTC, information submitted by other commenters in response to the Notice of Data Availability, and EPA's own experience, the Agency believes that most treatability studies can be conducted at or below the treatment rate limit of 250 kg per day.

The Agency believes this level will allow many wastes to be treated and evaluated as part of a treatability study, while posing only a *de minimis* risk to human health and the environment. For example, if a laboratory or testing facility were to conduct a treatability study on a waste using bench-scale incineration and the study achieved a 99% destruction removal efficiency, only a small amount of toxic material would be released into the environment. In most instances, the amount released is much lower than any level of concern. In addition, since in most cases these studies will be conducted on an intermittent basis, there is less concern with repeated exposure.

Laboratories or testing facilities that are conducting treatability studies and that meet the treatment rate limit are exempted from the requirements to obtain a Subtitle C treatment permit. The Agency wants to emphasize that the purpose of the exemption is for conducting treatability studies, not for the commercial management of hazardous waste. The Agency believes that facilities anticipating the need to conduct an excessively large number of studies, or those having numerous treatment units allowing them to conduct many studies concurrently, will probably need to obtain a Research, Development, and Demonstration permit (40 CFR 270.65). It should also be noted that the Agency recently promulgated a new set of permitting standards under Subpart X of Part 264 (52 FR 46946, December 10, 1987) for miscellaneous hazardous waste management units. The Agency is also considering developing regulations under Subpart Y that would establish permitting standards for experimental facilities conducting research and development on the storage, treatment, or disposal of hazardous waste.

4. Storage Limits

The HWTC, in its petition, recommended that a facility be allowed to store 1000 kg of hazardous waste on site without a storage permit, as long as such waste is for the purpose of conducting treatability studies. HWTC argued that this amount is essentially equal to the small quantity generator (SQG) limits and that the 1000 kg of waste included all waste (both received waste and treated residue). Many commenters argued that the 1000-kg storage limit would not allow them sufficient inventory to conduct certain treatability studies or argued that the storage limit should be based on the number of units present at the facility.

After evaluating this issue, the Agency has decided to adopt a storage limitation of 1000 kg per laboratory or testing facility. However, the Agency has also decided to specify the 1000-kg storage limitation for "as received waste. The 1000-kg storage limitation per laboratory or testing facility can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. The Agency is making it clear in this rule that the storage exemption only applies to laboratories or testing facilities conducting treatability studies. The quantity limitations allow sufficient inventory to conduct small-scale treatability studies while ensuring *de minimis* risk to human health and the environment. Higher storage limits would not give us this same assurance. Also the Agency notes, as discussed previously, financial and business incentives are present that help to ensure *de minimis* risk levels are maintained.

The Agency limits for soils, water, and other debris contaminated with acute hazardous waste were selected to allow small-scale treatability studies to be conducted on media contaminated with dioxin wastes and certain pesticides such as aldrin and aldicarb. Although the 500-kg storage limit is higher than that currently established for SQGs, the Agency believes that the 500-kg limit will still be protective of human health and the environment and pose *de minimis* risk, since in most instances the sample will only be stored for a short period of time prior to being utilized in a study. Furthermore, this category is limited to materials in which the acute hazardous waste involves a contaminant in a medium such as water or soil. Therefore, EPA would expect the concentration of the acute hazardous waste to be very low. Furthermore, the contaminant may be bound to the medium itself. For other acute hazardous wastes (*i.e.*, the actual listed waste), the Agency has adopted a 1-kg limit consistent with the SQG regulations.

5. Residues and Unused Samples-Time Limitations

Although the Notice of Data Availability did not propose any time limitations for completion of a treatability study, some commenters strongly recommended that appropriate time limits be placed on the storage of the "as received" waste samples and the residues generated from the treatability study. Suggestions on appropriate time limits varied widely. However, the commenters generally indicated that 1 year provides ample time to complete most treatability studies.

The Agency is in agreement with commenters that specific time limits for completing treatability studies are necessary. Time limitations are necessary to guard against potential abuses such as use of a laboratory or testing facility for long-term storage to avoid treatment and disposal. Any untreated sample and any residue generated during the treatability study must be returned to the generator within 90 days of study completion or within 1 year from the date of shipment by the generator to the laboratory or testing facility, whichever is earlier. Otherwise, these materials must be managed, by the laboratory or testing facility conducting the treatability study, as a RCRA hazardous waste (unless the waste is no longer hazardous). These time limits provide the laboratory or testing facility conducting the treatability study enough time to do the evaluation, but at the same time do not allow persons to store these wastes indefinitely. The 1-year time limit proved to be noncontroversial when adopted in other areas. For example, the 1-year time limit is consistent with the speculative accumulation provision and the closed-loop tank provision. Under these provisions, persons or facilities holding materials have 1 year to accumulate them before they are potentially subject to regulation.

Laboratories or testing facilities that do not return the unused sample or the residues to the generator or sample collector within the specified time limits are subject to appropriate regulation. Facilities must determine if they meet

the SQG requirements of § 261.5 or the accumulation requirements of § 262.34, and they may need to obtain a storage permit and comply with its conditions. Once samples and residues are returned to the generator, they are no longer exempt under today's rule. Ultimately, the unused sample and residues that are still hazardous must be manifested and disposed of in a RCRA-designated facility by the laboratory or testing facility, the waste generator, or sample collector.

6. Mobile Treatment Units

Although the issue of mobile treatment units (MTUs) was not addressed in the Notice of Data Availability and Request for Comment, concern was expressed over how this exemption applies to MTUs. EPA has determined that MTUs conducting treatability studies may qualify for this exemption. However, each MTU or group of MTUs operating at the same location is subject to the treatment rate, storage, and time limitations and the notification, recordkeeping, and reporting requirements that are applicable to stationary laboratories or testing facilities conducting treatability studies. That is, a group of MTUs operating at one location will be treated as one MTU facility for purposes of § 261.4 (e) and (f). Furthermore, these requirements apply to each location where an MTU will conduct treatability studies.

*D. Reporting and Recordkeeping Requirements*

Although the Notice of Data Availability did not specifically recommend that reporting and recordkeeping provisions be adopted, some commenters suggested that some form of reporting and recordkeeping should be required in the treatability study exemption. They argued that, without some form of reporting or recordkeeping requirements, EPA would not have a means of determining who is violating the exemption or the amount of waste subjected to treatability studies.

The Agency strongly agrees with the commenters and believes that reporting and recordkeeping requirements are necessary to facilitate inspector review and, if necessary, to assist in enforcement action. In fact, 40 CFR 216.2(f) already requires that persons who claim that their waste is conditionally exempt from regulation must provide appropriate documentation that they meet the conditions of the exemption. Therefore, the Agency is stipulating specific reporting and recordkeeping requirements that will document compliance with the quantity and time limitations set forth in this rulemaking. The reporting and recordkeeping requirements stipulated below are the minimum requirements necessary to ensure compliance with the limitations in the treatability sample exemption.

1. The generator of the sample (who may also be the shipper or sample collector) and the laboratory or testing facility conducting the treatability study must keep the following records for 3 years after the completion of the study:

a. A copy of the contract (between the generator and the laboratory or testing facility) to conduct the treatability study;

b. Copies of all shipping documents. (If the waste was shipped to an MTU, copies of the shipping papers must be kept with the unit for inspector review.)

2. Generators and sample collectors must also maintain records indicating the following: (1) The amount of waste (per waste stream and treatment process) shipped under the exemption; (2) to whom the shipment was sent (name, address, and EPA identification number of the laboratory or testing facility conducting the study); (3) the date shipment was made; and (4) whether or not any unused sample or any residue generated from the treatability study was returned. In addition, beginning in 1989, generators must report this information in their biennial reports.

3. In addition, laboratories or testing facilities conducting or intending to conduct treatability studies must accomplish the following:

a. Send a letter to the EPA Regional Administrator or the authorized State informing the Agency that the laboratory or testing facility intends to conduct small-scale treatability studies. This letter must be received no less than 45 days before the facility begins conducting treatability studies. The letter should indicate the address and EPA identification number of the laboratory or testing facility conducting studies and the types of treatability studies anticipated. Owners and operators of facilities that do not have an EPA identification number must obtain one before conducting any treatability studies under this exemption. This reporting requirement and the requirement to obtain an EPA identification number apply to owners and operators of MTUs at every treatability study location (except at CERCLA sites where, under CERCLA section 121(e)(1) and 40 CFR 300.68(a)(3), RCRA permits are not required).

b. Maintain appropriate records and documentation for a period of 3 years following completion of each treatability study that show compliance with the appropriate quantity and time limitations addressed in the final rule. The records must indicate that the laboratory or testing facility is meeting the requirements for shipment limits, treatment rate limits, and storage limits. Specific minimum information, by treatability study, that must be maintained include the following:

- The name, address, and EPA identification number of the generator or sample collector of the waste samples;
- The date the shipment was received;
- The quantity of waste accepted;
- The quantity of "as received" waste in storage each day;
- The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- The date the treatability study was concluded; and
- The date the unused sample and residue were returned to the generator or, if sent to a designated facility, the name of the facility and its EPA identification number. As noted above, the laboratory or testing facility must keep copies of all shipping documents associated with transport of the waste to and from the facility.

c. By March 15 of each year, submit a report to the authorized State or Regional Administrator that includes an estimate of the number of studies and the amount of waste expected to be used in treatability studies during the current year and the following information for the previous calendar year:

- The name, address, and EPA identification number of the generator or sample collector of each waste sample;
- The date the shipment was received;
- The quantity of waste accepted;
- The total quantity of "as received" waste in storage each day;
- The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;
- The date the treatability study was concluded; and
- The date any unused sample and residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

d. Notify the Regional Administrator or authorized State by letter when and if the laboratory or testing facility is no longer planning to conduct any

treatability studies at the site. (For example, when an MTU completes a treatability study at a site, the owners or operators must submit the required notice that they will no longer be conducting treatability studies at that site.)

*E. EPA Identification Numbers—Applicability of OSHA Training Requirements*

Some commenters suggested that any laboratory or testing facility conducting treatability studies should be required to have an EPA identification number. These commenters argued that such a restriction would ensure that the facility is in compliance with the requirements to have a facility contingency plan, has established emergency procedures, and is in compliance with OSHA's hazardous waste workers' training and medical monitoring requirements. (See 29 CFR 1910.120, 51 FR 45654, December 19, 1986.)

The Agency partially agrees and is requiring any laboratory or testing facility conducting treatability studies to notify the Agency and obtain an EPA identification number if the facility does not already have one. However, as already explained, the Agency believes laboratories or testing facilities conducting treatability studies within the limits specified present a *de minimis* risk. For example, the OSHA hazardous waste operators and emergency response requirements (29 CFR 1910.120) are applicable except for SQGs and facilities complying with the accumulation time requirements of 40 CFR 262.34. Other OSHA requirements, such as the OSHA laboratory standards and general duty clause (29 USC 654(a)(1)), may apply depending on the type of laboratory or testing facility and the nature of its activities. Thus, EPA believes requirements such as contingency plans and emergency procedures are not necessary for the protection of human health and the environment.

*F. Incentives for Safe Transport*

In the Notice of Data Availability, the Agency specifically requested comment on whether the incentives for safe transport and storage of waste characterization samples would also apply to treatability samples. Most commenters agreed that suitable incentives exist to ensure proper handling and shipping of treatability study samples.

The Agency generally agrees. In particular, a principal purpose of the generator and transporter requirements is to assure that shipments of hazardous wastes are safely delivered to an appropriate destination (*i.e.*, a permitted or interim status hazardous waste management facility). This is accomplished through the requirements for manifesting, recordkeeping, packaging, and labeling of hazardous waste. The principal purpose of the manifest system is to ensure "cradle to grave" accountability for shipments of hazardous waste from the generator to a TSDF.

In the case of treatability study samples, EPA wants to ensure that the samples are delivered to the facility conducting the treatability study, and that both the unused sample and all residues generated in the treatability study are sent back to the generator or sample collector or, alternatively, shipped to a designated facility if the waste remains hazardous.

The Agency believes that sufficient incentives and requirements are in place to provide for the safe shipment of samples to and from laboratories and testing facilities conducting treatability studies. In particular, they include:

1. Maintenance of corporate reputation and public confidence;

2. The high cost of these studies coupled with the generator's or sample collector's need for properly documented results;

3. The need for the generator or sample collector to verify results of a treatability study; and

4. Requirements in today's rule for either returning the unused samples and residues to the generator or sample collector, or for manifesting and shipping these materials to a TSDF for ultimate disposal.

The Agency believes that the above incentives and requirements will guard against any facility not complying with the limitations or conducting bogus treatability studies. Furthermore, DOT or other regulations and guidelines control the transportation of such samples even in the absence of EPA regulation. The requirements to comply with DOT shipping regulations regarding packaging and labeling will be substantially the same as present requirements for shipping hazardous waste. Additionally, the USPS has stringent guidelines governing the shipment of hazardous materials, including samples. (See the "Domestic Mail Manual," Part 124 and Publication 52, "Acceptance of Hazardous or Perishable Articles.") For the above reasons, the Agency believes that the transport of small quantities of hazardous waste poses *de minimis* risk during shipment to a laboratory or testing facility or when being returned to the generator or sample collector.

**III. Today's Amendment**

The Agency believes that the full complement of the hazardous waste regulations found in 40 CFR, Parts 260 through 268 and 270, when applied to waste samples used in small-scale treatability studies, are more comprehensive than necessary to adequately protect human health and the environment. In addition, the Agency believes that it needs to promote research and the development of innovative technologies to manage hazardous wastes. Therefore, EPA is amending the regulations to conditionally exempt waste samples processed in small-scale treatability studies from the hazardous waste regulations under certain conditions.

In particular, EPA is today adding new paragraphs (e) and (f) to 40 CFR 261.4 which accomplish the following: First, persons who generate samples are exempted from the generator and transporter requirements when samples are shipped by the generator, or any other person who collects the sample (the "sample collector"), to a laboratory or testing facility for the purpose of conducting a treatability analysis, or when shipped from the facility back to the sample collector, provided that certain packaging and labeling requirements are met. Second, any laboratory or testing facility that conducts treatability studies may store these waste samples and residues generated from the treatability study within the quantity and time limits specified and not be subject to the requirements of 40 CFR, Parts 264, 265, and 270. Third, the actual testing of the samples does not require a permit, provided the laboratory or testing facility complies with the limitations specified in today's rule.

Laboratories and testing facilities that conduct treatability studies must also keep records and documents regarding each treatability study as enumerated in II.D.3.6. above. Additionally, today's rule requires facilities conducting treatability studies to submit an annual report to the authorized State or Administrator of the EPA Region in which the laboratory or testing facility is located. The required annual report must be a distinct document prepared by the owner and/or operator of the laboratory or testing facility indicating the previous calendar year's activities regarding treatability studies. The report must be submitted by March 15 of each year and must identify the laboratory or testing facility by name, EPA identification number, and the location (site address) at which the treatability

studies were conducted. Paragraph II.D.3.c. above lists specific information required in the report. The obligation to submit annual reports continues until the laboratory or testing facility discontinues treatability studies, returns all unused "as received" samples and any residues generated in the treatability studies back to the generator or sample collector, and notifies the Regional Administrator or State Director that the laboratory or testing facility no longer plans to conduct any treatability studies at the site.

Paragraph (e), Treatability Study Samples, provides an exemption for generators of samples of hazardous waste to be evaluated in treatability studies, while they are being prepared for transport or being transported, provided that these samples and their residues are returned to the generator within specified time limits. The exemption limits the sample collector or generator from shipping more than 1000 kg per non-acute hazardous waste stream per treatment process (or 250 kg of soils, water, or debris contaminated with acute hazardous waste, or 1 kg of acute hazardous waste). Shipments must comply with the applicable DOT, USPS, or other applicable regulations for shipping hazardous materials.

The generator or sample collector must also maintain records indicating the amount of waste shipped under the exemption, the name and address of the laboratory or testing facility, the facility EPA identification number, type of study, and the expected duration of the study. Beginning in 1989, the generator or sample collector must also include the above information in its biennial report.

Paragraph (f), Samples Undergoing Treatability Studies at Laboratories or Testing Facilities, describes the limitations that apply to a facility conducting treatability studies under this exemption. The facility may subject no more than 250 kg of "as received" waste to treatability studies in any one day. The facility may store a maximum of 1000 kg of "as received" waste, of which 500 kg can be soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. The facility must also return any unused sample and residues to the generator within 90 days after completion of the study or within 1 year after initial shipment (whichever is earlier), or otherwise manage the sample and residue as a RCRA hazardous waste, if the residue is still hazardous.

The facility must meet certain specified reporting requirements. The facility must provide notification (by letter) to the Regional Administrator or authorized State indicating that the facility intends to conduct treatability studies under the exemption. It must obtain an EPA identification number if it does not have one. The facility must also maintain records documenting compliance with the specified time and quantity limits for treatment and storage and must keep records of all shipping documents for 3 years from the completion of the treatability study.

The owner or operator of a facility conducting treatability studies must also submit a report to the Regional Administrator or authorized State indicating the type and number of treatability studies conducted during the previous calendar year, for whom each study was conducted, the quantity of hazardous waste utilized in each treatability study, when each study was conducted, and the final disposition of residue and any unused sample. The report must include an estimate of the number of treatability studies to be conducted and the quantity of hazardous waste expected to be used in treatability studies during the coming year. The facility must also notify the Regional Administrator or authorized State by letter when and if the facility is no longer planning to conduct any treatability studies at the site.

## IV. State Authority

### *A. Applicability of Rules in Authorized States*

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to implement those requirements and prohibitions in an authorized State, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

### *B. Effect of State Authorizations*

Today's announcement promulgates regulations that are not effective under HSWA in authorized States, since this rulemaking does not impose requirements or prohibitions contained in HSWA. Thus, the regulations will be applicable only in those States that do not have final authorization. In an authorized State, the regulations will not be applicable until the State revises its program to adopt equivalent regulations under State law.

40 CFR 271.21(e)(2) requires that States having final authorization must modify their programs to include equivalent regulations within a year of promulgation of these regulations if only regulatory changes are necessary, or within 2 years of promulgation if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)). Once EPA approves the modification, the State requirements become Subtitle C RCRA requirements.

States with authorized RCRA programs may already have regulations similar to those in today's rule. These State regulations have not been compared with the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law.

Authorized States are only required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. For those changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose more stringent or broader regulations than the Federal program. The regulations promulgated today at

§§ 261.4 (e) and (f) are considered to be less stringent than or reduce the scope of the existing Federal regulations because today's rule exempts certain activities now within the purview of RCRA. Therefore, authorized States are not required to modify their programs to adopt regulations consistent with and equivalent to this rulemaking.

Even though States are not required to adopt today's rulemaking, EPA strongly encourages States to do so as quickly as possible. As already explained in this preamble, today's rule is needed to facilitate evaluating remediation alternatives for CERCLA clean-ups and the RCRA Corrective Action Program, and to speed research and development for treatment alternatives to land disposal and waste minimization, recycling, and reuse. States are, therefore, urged to consider the adoption of today's rule; EPA will expedite review of authorized State program revision applications.

States are also encouraged to use existing authorities to provide for comparable treatability exemptions prior to adopting and receiving authorization for today's rule. Some States may have authority comparable to RCRA Section 7003, which allows EPA to order response action in the case of imminent and substantial endangerment to health or the environment "notwithstanding any other provision of this Act." An authorized State may use comparable section 7003-type authority to authorize treatability studies and may waive the generator, transporter, notification, and permit requirements consistent with today's rulemaking.

In addition to, or in lieu of, a section 7003-type authority, a State may have general waiver, permit waiver, or emergency permit authority. Consistent with this rule, states are encouraged to use any such authority to grant treatability exemptions in a manner consistent with today's rule.

## V. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions to those regulations take effect 6 months after promulgation. The purpose of this requirement is to allow facilities that handle hazardous wastes sufficient lead time to prepare for and to comply with major new regulatory requirements. Given the potential of this rule to increase the timeliness of CERCLA remedial clean-up activities, RCRA corrective actions, and compliance with the land disposal restrictions, the Agency believes that an effective date of 6 months after promulgation would unnecessarily disrupt implementation of the regulations and would not be in the public interest. Since this amendment reduces, rather than increases, the existing requirements for facilities that handle waste samples, there is no basis for allowing a lengthy time period to prepare for compliance. The same reasons provide good cause to make this rule effective immediately upon publication notwithstanding section 4(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Therefore, this amendment takes effect immediately upon publication in the **Federal Register**.

The application of this final rule is prospective only. Any treatability studies covered by this final rule that were conducted before the effective date of this regulation are subject to the Subtitle C hazardous waste regulations, including permitting requirements.

## VI. Regulatory Analyses

### *A. Executive Order No. 12291*

Under Executive Order No. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This final regulation is not major because it will not result in an effect on the economy of $100 million or more, and it will not increase costs or prices to industry. Rather, this regulation will reduce the overall costs and economic impact of EPA's hazardous waste management regulations by eliminating permitting requirements for laboratories and testing facilities intending to conduct treatability studies. The Agency estimates that perhaps 400 facilities and laboratories nationwide will be affected by promulgation of this rule. Facilities and laboratories will be spared the time (as much as 2 years) and the costs (estimated to be between $100,000 and $200,000) otherwise necessary to obtain a RCRA permit. In addition, there will be no adverse effect on the ability of U.S.-based enterprises to compete with the non-U.S.-based enterprises in domestic or export markets. Because this amendment is not a major regulation, no Regulatory Impact Analysis has been conducted.

This amendment was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order No. 12291.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an Agency is required to publish general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities. As noted previously in this preamble, the universe of facilities affected is estimated to total about 400; of these, perhaps 200 are small business entities. By eliminating time-consuming and costly permitting requirements, the Agency anticipates that promulgation of this rule will have a positive effect on small entities.

This amendment will have no adverse economic impact on small entities. In fact, it should reduce the burden imposed on small entities that conduct treatability studies and comply with the provisions of this rulemaking. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation therefore does not require a regulatory flexibility analysis.

### *C. Paperwork Reduction Act*

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et. seq.*, and have been assigned the OMB control number 2050–0088 (Treatability Studies Notification and Recordkeeping).

Public reporting burden for this collection of information is estimated to vary from 90 to 250 hours per response, with an average of 155 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## VII. Supporting Documentation

A background document in which EPA responds to any comments not addressed in this preamble, entitled "Summary and EPA Responses to Public Comments on the September 18, 1987 Notice of Data Availability and Request for Comment, and the September 25,

1981 Interim Final Rule," dated June 1988, is available in the RCRA docket at EPA (LG-100), 401 M St., SW., Washington, DC 20460. The docket number for this rulemaking is F-88-TSSE-FFFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. The public must make an appointment to review docket materials by calling (202) 475-9327. Copies cost $0.15 per page.

**VIII. List of Subjects**

*40 CFR Part 260*

Administrative practice and procedure, Confidential business information, Hazardous waste.

*40 CFR Part 261*

Hazardous waste, Recycling.

Date: July 11, 1988.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The Authority Citation for Part 260 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974.

2. Section 260.10 is amended by adding the following definition in alphabetical order:

**§ 260.10 Definitions.**

* * * * *

"Treatability Study" means a study in which a hazardous waste is subjected to a treatment process to determine: (1) Whether the waste is amenable to the treatment process, (2) what pretreatment (if any) is required, (3) the optimal process conditions needed to achieve the desired treatment, (4) the efficiency of a treatment process for a specific waste or wastes, or (5) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the § 261.4 (e) and (f) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste.

* * * * *

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The Authority Citation for Part 261 is revised to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Section 261.4 is amended by adding two new paragraphs (e) and (f) to read as follows:

**§ 261.4 Exclusions.**

* * * * *

(e) *Treatability Study Samples.* (1) Except as provided in paragraph (e)(2) of this section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in section 260.10, are not subject to any requirement of Parts 261 through 263 of this chapter or to the notification requirements of Section 3010 of RCRA, nor are such samples included in the quantity determinations of § 261.5 and § 262.34(d) when:

(i) The sample is being collected and prepared for transportation by the generator or sample collector; or

(ii) The sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) The sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses (in "treatability studies") no more than 1000 kg of any non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

(ii) The mass of each sample shipment does not exceed 1000 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and

(iii) The sample must be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met.

(A) The transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

(*1*) The name, mailing address, and telephone number of the originator of the sample;

(*2*) The name, address, and telephone number of the facility that will perform the treatability study;

(*3*) The quantity of the sample;

(*4*) The date of shipment; and

(*5*) A description of the sample, including its EPA Hazardous Waste Number.

(iv) The sample is shipped to a laboratory or testing facility which is exempt under § 261.4(f) or has an appropriate RCRA permit or interim status.

(v) The generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) Copies of the shipping documents;

(B) A copy of the contract with the facility conducting the treatability study;

(C) Documentation showing:

(*1*) The amount of waste shipped under this exemption;

(*2*) The name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(*3*) The date the shipment was made; and

(*4*) Whether or not unused samples and residues were returned to the generator.

(vi) The generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Regional Administrator, or State Director (if located in an authorized State), may grant requests, on a case-by-case basis, for quantity limits in excess of those specified in paragraph (e)(2)(i) of this section, for up to an additional 500 kg of non-acute hazardous waste, 1 kg of acute hazardous waste, and 250 kg of soils, water, or debris contaminated with acute hazardous waste, to conduct further treatability study evaluation when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment. The additional quantities allowed are subject to all the provisions in paragraphs (e)(1) and (e)(2)(ii)(vi) of this section. The generator or sample collector must apply to the Regional Administrator in the Region where the sample is collected and provide in writing the following information:

(i) The reason why the generator or sample collector requires additional quantity of sample for the treatability study evaluation and the additional quantity needed;

(ii) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the data each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(iii) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(iv) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(v) Such other information that the Regional Administrator considers necessary.

(f) *Samples Undergoing Treatability Studies at Laboratories and Testing Facilities.* Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to any requirement of this Part, Part 124, Parts 262–266, 268, and 270, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f) (1) through (11) of this section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f) (1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f) (1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Regional Administrator, or State Director (if located in an authorized State), in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 250 kg of "as received" hazardous waste is subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 1000 kg, the total of which can include 500 kg of soils, water, or debris contaminated with acute hazardous waste or 1 kg of acute hazardous waste. This quantity limitation does not include:

(i) Treatability study residues; and

(ii) Treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for 3 years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

(i) The name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) The date the shipment was received;

(iii) The quantity of waste accepted;

(iv) The quantity of "as received" waste in storage each day;

(v) The date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) The date the treatability study was concluded;

(vii) The date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending 3 years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Regional Administrator, or State Director (if located in an authorized State), by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) The name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) The types (by process) of treatability studies conducted;

(iii) The names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

(iv) The total quantity of waste in storage each day;

(v) The quantity and types of waste subjected to treatability studies;

(vi) When each treatability study was conducted;

(vii) The final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under § 261.3 and, if so, are subject to Parts 261 through 268, and Part 270 of this Chapter, unless the residues and unused samples are returned to the sample originator under the § 261.4(e) exemption.

(11) The facility notifies the Regional Administrator, or State Director (if located in an authorized State), by letter when the facility is no longer planning to conduct any treatability studies at the site.

[Approved by the Office of Management and Budget under control number 2050–0088]

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Part V

# Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 502

Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services; Proposed Rule

**DEPARTMENT OF LABOR**

**Employment Standards Administration, Wage and Hour Division**

**29 CFR Part 502**

## Reporting and Employment Requirements for Employers of Certain Workers Employed in Seasonal Agricultural Services

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Proposed rule.

**SUMMARY:** The Employment Standards Administration (ESA) of the U.S. Department of Labor (DOL) is promulgating proposed regulations regarding the reporting and employment requirements for any employer who employs certain resident aliens in seasonal agricultural services. These reporting requirements apply to workers employed from October 1, 1988, to September 30, 1992, and were developed with the Department of Agriculture after consultation with the Department of Justice and the Bureau of the Census

Section 210A of the Immigration and Nationality Act (INA) as amended by the Immigration Reform and Control Act (IRCA) requires any employer to report information about the quantity of work performed by a special agricultural worker employed in seasonal agricultural services. This information is submitted in certificate form to the Federal Government and to any individual replenishment agricultural worker. In part on the basis of this information furnished to the Federal Government, the Secretaries of Labor and Agriculture will determine the number, if any, of additional replenishment agricultural workers to be admitted into the United States.

These regulations specify the employer reporting requirements and provisions concerning the terms of employment respecting replenishment agricultural workers as prescribed by section 210A of INA.

**DATE:** Comments must be submitted on or before August 15, 1988. Early submission of comments is requested to facilitate publication of a final rule prior to the effective date of these statutory provisions.

**ADDRESS:** Submit comments to Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Paula V. Smith, Administrator, (202) 523-8305.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

Public reporting burden for this collection of information is estimated to average 20½ minutes per response for the report to the Federal Government on Form ESA-92, one minute per response for the report to replenishment agricultural workers (optional Form WH-501R), and one hour per year for the underlying recordkeeping. This burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including comments on the ESA 92 and optional WH501R and suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### Background

The Immigration and Nationality Act of 1952 (INA) was amended by the Immigration Reform and Control Act of 1986 (IRCA) to (1) control illegal immigration into the United States and (2) make limited changes in the system for legal immigration. In this regard, section 210 of the INA grants temporary resident alien status to special agricultural workers (SAWs) who can demonstrate that they performed seasonal agricultural services for at least 90 "man-days" (referred to in this document as "work-days" and meaning any day with at least four (4) hours worked) during the 12-month period ending May 1, 1986.

On the basis, among other things, of information regarding work-days of employment (during each fiscal year (FY) from FY 1989 to FY 1992) submitted to the Federal Government, the Secretaries of Labor and Agriculture shall determine the number, if any, of additional special agricultural workers, termed replenishment agricultural workers (RAWs), to be admitted (during each fiscal year from FY 1990 to FY 1993) temporary resident alien status to the United States to perform seasonal agricultural services. The admittance of replenishment agricultural workers is to meet a shortage of workers employed in seasonal agricultural services.

To make this determination, section 210A(b)(2) of the INA requires an employer of SAWs (including RAWs) employed in seasonal agricultural services to assemble employment information which is then reported to the Federal Government for the period beginning October 1, 1988, through September 30, 1992, and to any individual replenishment agricultural worker for the period beginning October 1, 1989, through September 30, 1992.

Section 210A(f)(4) of the INA provides for assessment of a civil money penalty of not more than $1,000 for each violation, as provided under section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), for, among other things, failure to provide, or failure to provide accurately, the information as required by INA section 210A(b)(2).

### Summary of Proposed Rule

This proposed rule would establish—

(1) Data collection procedures to enable the Federal Government to make determinations about the annual number of replenishment agricultural workers to be admitted in the United States and given temporary residency status, from October 1, 1989, to September 30, 1993, to meet a shortage, or replenish, the number of workers employed in seasonal agricultural services; and

(2) A method whereby a replenishment agricultural worker can assemble information necessary to establish the work history needed to apply and qualify for permanent resident status after three years (from being admitted for temporary residency). The work history needed is 90 work-days (any day with at least four (4) hours worked) a year for three consecutive years employed in seasonal agricultural services. Accordingly, an employer who hires a replenishment agricultural worker shall report the employment information specified by this rule to the worker each pay period when seasonal agricultural services are performed, for the period through September 30, 1992. Although replenishment agricultural workers will need such information for three years to retain temporary resident alien status and to avoid deportation (any RAWs admitted in FY 1993 will need to demonstrate a work history in seasonal agricultural services at least through FY 1995 to apply and qualify for permanent residency) and will need such data for at least five years to apply for citizenship, the statute only authorizes the Department of Labor to require such reporting through September 30, 1992.

To carry out the statutory requirements, employers are mandated to 1) identify each reportable worker employed in seasonal agricultural services subject to this part, 2) report to the Federal Government the number of work-days performed by any such reportable worker, and 3) report the number of work-days performed to each replenishment agricultural worker.

Under the provisions of Section 274A of the INA, and employer may only hire persons who are eligible to work in the United States. With respect to any person hired after November 6, 1986, every employer must verify the employee's identity and employment eligibility and complete the Immigration and Naturalization Service (INS) Employment Eligibility Verification Form I-9. See 8 CFR 274a.2. When completing the Form I-9, the employer is able to recognize reportable workers subject to the provisions of this part by the INS Alien Registration Number provided by the employee on the INS Form I-9.

Any prospective employee must provide documentation that establishes both identity and employment eligibility within three business days of hire. When completing the top portion of the I-9 Form, a prospective employee who is not a United States citizen also provides an INS Alien Registration Number in completing the employee's part (Part 1) of the I-9 form. As long as the documents furnished by the worker satisfy the requirements of the INS regulations as set forth on the Form I-9, an employer may not require any additional or specific documents from the employee (see 8 CFR 274a.2(b)(v)).

An employer therefore is unable to determine which employees are special agricultural workers based on the document(s) presented to establish identity and employment eligibility. INS has, or will, assign INS Alien Registration Numbers in the A 90000000 series to all workers whose status has been adjusted under the provisions of the IRCA amendments to the INA, including special agricultural workers (and replenishment agricultural workers). Therefore these regulations define a reportable worker as any worker employed in seasonal agricultural services whose INS Alien Registration Number is within the A 90000000 series.

An employer must report to the Federal Government as prescribed herein on the employment of any and all resident aliens identified with an INS Alien Registration Number in the A 90000000 series who are employed in seasonal agricultural services for even one work day (any day in which at least four hours of work are performed). Such reports must be submitted each quarter in which any reportable worker is employed in seasonal agricultural services for the period October 1, 1988, through September 30, 1992. Where employment verification has been performed by a State Employment Service, rather than the employer, these regulations require the State Employment Service to provide the Alien Registration Number on its certification to the employer. Therefore, in all cases the employer can identify the reportable worker under this part.

As set forth above, the INA as amended by IRCA requires that employers verify the identity and employment eligibility of all employees hired after November 6, 1986. However, the Act also provides that no penalties will be assessed prior to December 1, 1988, against employers with respect to employees in seasonal agricultural services. A statement of mutual understanding between representatives of agricultural growers and the INS provides that the INS will not initiate enforcement penalties against agricultural employers for failing to fulfill the I-9 requirements prior to December 1, 1988, and INS and the representatives of the growers will encourage the growers to complete the I-9 form for all employees hired after November 6, 1986. After December 1, 1988, agricultural employers will be liable for penalties for failing to conduct such verification and to complete I-9's on any workers then in their employment for whom there is no completed I-9.

These regulations require employers to report to the Federal Government on all workers employed in seasonal agricultural services after October 1, 1988, who are identified as reportable workers through the I-9 process (i.e., who have Alien Registration Numbers in the A 90000000 series. For the first quarter of reporting, October 1, through December 31, 1988, an employer must therefore report the number of workdays performed in seasonal agricultural services in the months of October and November, as well as December, with respect to all employees for whom I-9's are completed, whether completed before or after December 1, 1988, and whether the workers are employed before or after December 1, 1988.

The reports furnished to the Federal Government under these regulations are a part of the statutory process for determining the numerical limit on the number of replenishment agricultural workers admitted in the United States annually. After the reports are received by the Federal Government, the INS will determine which of the resident alien workers in the A 90000000 series on whom reports were submitted were admitted under the special agricultural worker program. The Bureau of the Census will than use this data to determine the number of special agricultural workers employed in seasonal agricultural services (based on work performed by special agricultural workers who worked 15 work-days *in the aggregate* in seasonal agricultural services for any number of employers), and the average number of work-days in seasonal agricultural services performed by such special agricultural workers. In this regard, every employer of a reportable worker or workers is mandated to report as prescribed herein even one work-day (a day with four hours or more of work) in seasonal agricultural services by any reportable worker.

The determinations of the Bureau of the Census will then be used, along with other information, by the Secretaries of Labor and Agriculture to determine the number, if any, of replenishment agricultural workers to be admitted to the United States with temporary resident status to perform seasonal agricultural services in FY 1990 through FY 1993. Another rule will be promulgated to explain this procedure.

Included within the A 90000000 series are all of the replenishment agricultural workers who will be identified with an INS Alien Registration Number series to be incorporated in these regulations when announced by INS at a later date. As in the case of the special agricultural worker, any employer must report to the Federal Government on the employment of any replenishment agricultural worker in seasonal agricultural services. Also, any employer must report to each such replenishment worker, with each wage payment, information concerning the number of work-days the individual was employed in seasonal agricultural services. Since MSPA currently requires the provision of employment information to migrant and seasonal agricultural workers each pay day, optional form WH-501 used for such reports, is being modified (WH-501R) to include the work-day information required by these regulations. Employers have the option, however, of providing the information to the workers in any manner, such as on the pay stub furnished workers with their wages.

Because this employment information will be needed by replenishment workers to establish permanent residency and citizenship, these regulations require the WH-501R (or other form furnished to the workers), as

well as the underlying payroll data for such replenishment workers, to be retained for five years (the minimum employment period in seasonal agricultural services required for citizenship). This will assist the replenishment agricultural workers in establishing their employment history and will assist INS in verifying work histories provided by such workers. Other records and reports required by these regulations need to be retained for three years.

The responsible person to report to the replenishment agricultural worker and to the Federal Government is the person who prepares, and is responsible for retaining, the I-9 Form. In this regard the Department of Labor has incorporated the definitions of "employee," "employer," "employment," and "independent contractor" promulgated by the INS in its regulations, 8 CFR 274a.1. Those regulations define employer to mean the contractor, not the person using the contract labor. As a general matter, therefore, it is likely to be the farm labor contractor who is responsible for reporting, rather than grower who uses the services of the farm labor contractor.

Pursuant to section 210A (f)(1), (2), and (3) of the INA, additional provisions of the regulations require that employers of a replenishment agricultural worker must 1) provide the same transportation arrangements to other workers as are provided to a replenishment agricultural worker and 2) not discriminate against a replenishment agricultural worker. The Act at section 210A(f) further requires that employers who would otherwise be exempt from the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) (29 U.S.C. 1801 et seq.) pursuant to section 4(a)(1) or (2) of MSPA, not knowingly provide false or misleading information to a replenishment agricultural worker concerning the terms, conditions, or existence of agricultural employment.

In addition, pursuant to the definition of "seasonal agricultural services" in section 210(h) of the Act, the Department of Labor has incorporated the definitions of "field work," "horticultural specialities," "fruits," "vegetables," and "other perishable commodities" promulgated by the Department of Agriculture regulations, 7 CFR Part 1d. The Department of Agriculture is currently considering amending these provisions. Any such amendments will be automatically incorporated in these regulations. In addition, pursuant to the order issued in *National Cotton Council of America v. Lyng*, Civil No. CA-5-87-0200 (N.D. Tex., February 8, 1988) "cotton" has been declared to be a fruit and therefore it is not listed as an example of a commodity excluded from the definition of "other perishable commodities." Because application of the provisions of sections 210 and 210A to hay, sod, and sugar cane is in litigation, these proposed regulations also include field work on those crops for purposes of these regulations only. The requirement of reporting on these crops does not constitute evidence that they are eligible crops for purposes of the special agricultural worker program. Rather, they are included to enable the Federal Government and the individual replenishment workers to obtain data on work on these crops which will be needed if it is ultimately determined that they are eligible crops. Once the issues are finally resolved in the courts, these regulations will be amended accordingly.

Finally, the regulations contain enforcement procedures, including procedures for assessing civil money penalties for violations of section 210A in accordance with MSPA, pursuant to INA section 210A(f).

### Executive Order 12291; Regulatory Flexibility Act

The Department has determined that this proposed rule is not a major rule under Executive Order 12291. The Department has also determined that this rule will not have a significant economic impact on a substantial number of small entities. These conclusions are reached because most of the entities affected are already providing agricultural workers with itemized pay stubs in compliance with the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA). The amount of time spent preparing reports to the Federal Government will not be substantial. Consequently, the Department certifies under the Regulatory Flexibility Act, that the rule will not have significant economic impact on a substantial number of small entities.

Editorial Note: The Department presents forms in the Appendix which satisfy certain disclosure and recordkeeping aspects of the Act and the regulations. These forms, however, will not appear in the Code of Federal Regulations.

### Appendix

Appendix A—Work-Day Report, ESA-92.

Appendix B—Wage Statement, WH-501R.

### List of Subjects in 29 CFR Part 502

Administrative practice and procedure, Agricultural associations, Agricultural worker, Aliens, Farmers, Farm labor contractor, Immigration, Investigation, Labor, Penalties, Replenishment Agricultural Workers, Reporting requirements, Special Agricultural Workers.

For the reasons set out in the preamble, Title 29 of the Code of Federal Regulations, Chapter V, is proposed to be amended as set forth below.

Signed at Washington, DC, this 14th day of July, 1988.

**Ann McLaughlin,**

*Secretary of Labor.*

**Fred W. Alvarez,**

*Assistant Secretary for Employment Standards.*

**Paula V. Smith,**

*Administrator, Wage and Hour Division, Employment Standards Administration.*

A new Part 502 is added to read as follows:

## PART 502—REPORTING AND EMPLOYMENT REQUIREMENTS FOR EMPLOYERS OF CERTAIN WORKERS EMPLOYED IN SEASONAL AGRICULTURAL SERVICES

### Subpart A—General Provisions



### Subpart B—Employment and Reporting Requirements



### Subpart C—Enforcement

Authority: 8 U.S.C. 1160, 1161; 29 U.S.C. 1801 et seq.; 502.6 also issued under 29 U.S.C. 49k.

## Subpart A—General Provisions

### § 502.0 Introduction.

(a) Pursuant to the requirements of Section 210A of the Immigration and Nationality Act (INA), the regulations in this part are promulgated and apply to employers with obligations, among other things, to provide reports applicable to the employment of any reportable worker (as defined in this part) employed in seasonal agricultural services. Reporting shall be to the Federal Government and to any individual replenishment agricultural worker.

(b) The statute requires the Director of the Bureau of Census, on the basis of information which is reported to the Federal Government, to estimate (1) the number of special agricultural workers employed in seasonal agricultural services in the United States at any time during the fiscal year and (2) the average number of "man-days" of labor performed by these workers during the fiscal year. [For purposes of this part, an alternative term "work-day" is adopted and incorporated into the text of this part in lieu of "man-day" and means any day when at least four (4) hours are worked.]

(c) The regulations contained in this part are issued in accordance with section 210A of INA in order to establish the rules necessary to carry out the provisions of INA.

### § 502.1 Purpose and scope.

(a) The INA was amended by the Immigration Reform and Control Act (IRCA) in 1986, in order to more effectively control illegal immigration to the United States and to make certain changes in the system for legal immigration.

(b)(1) Section 210 of the INA provides that the Attorney General shall adjust the status of an alien to that of an alien lawfully admitted for temporary residence if the Attorney General determines that the alien resided in the United States and performed work in seasonal agricultural services in the United States for at least 90 work-days during the 12-month period ending on May 1, 1986. This worker is called a special agricultural worker (SAW). A special agricultural worker is given an INS Alien Registration Number in the A 90000000 series.

(2) Section 210A of the INA provides that before the beginning of each fiscal year (beginning 1990 and ending 1993), the Secretaries of Labor and Agriculture shall jointly determine the number (if any) of replenishment agricultural workers (RAWs) to be admitted to the United States, or otherwise acquire the status of aliens lawfully admitted for temporary residence, to meet a shortage of agricultural workers. A replenishment agricultural worker will be identified by an INS Alien Registration Number in a series (within the A 90000000 series) that INS will announce at a later date.

(c) This regulation establishes a method whereby an employer must assemble employment information on certain resident alien workers employed in seasonal agricultural services to be reported to the Federal Government and to any replenishment agricultural worker. This will assist the Secretaries of Labor and Agriculture in determining the number of replenishment agricultural workers to be admitted and will assist the replenishment agricultural worker in establishing a work history so that after three (3) consecutive years the worker can apply for and be granted permanent residency in the United States. After five (5) years with such work history the worker can apply for naturalization. The work history needed is 90 work-days a year employed in seasonal agricultural services for three consecutive years after admission to qualify for permanent residency and for five years to apply for citizenship. The Act and these regulations require the reporting by the employer to the Federal Government and to the replenishment agricultural worker for employment in seasonal agricultural services from October 1, 1988, until September 30, 1992.

(d) Any person who hires any worker must complete the Employment Eligibility Verification Form (INS Form I-9). Any resident alien who is identified with an INS Alien Registration Number in the A 90000000 series (termed "reportable worker") on the I-9 Form, including any replenishment agricultural worker (who will be identified with an INS Alien Registration Number in a series, within the A 90000000 series, that INS will announce at a later date) and who is employed in seasonal agricultural services, is an employee subject of this part. Employers cannot determine whether such an employee is a special agricultural worker since potential employees cannot be required to document such status to anyone other than INS (see 8 CFR 274a.2(b)(v)).

(e) The provisions of Section 210A(b)(2) of INA establish reporting requirements when employing certain workers in seasonal agricultural services. These regulations require that for the period beginning October 1, 1988, and ending September 30, 1992—

(1) Any person or entity employing any reportable worker in seasonal agricultural services shall report employment information to the Federal Government each quarter;

(2) Any person or entity employing any replenishment agricultural worker in seasonal agricultural services shall report employment information directly to the replenishment agricultural worker individually on a pay period basis at the time of each wage payment and no less frequently than twice per month (as well as to the Federal Government each quarter).

(f) Any employment of a reportable worker (with an INS Alien Number within the A 90000000 series) in seasonal agricultural services is subject to the reporting requirements to the Federal Government. Additionally, any employment of a replenishment

agricultural worker (who will be identified with an INS Alien Registration Number in a series within the A 90000000 series that INS will announce at a later date) in seasonal agricultural services is subject to both the reporting requirements to the Federal Government and to the individual worker.

(g) The certificate submitted by an employer to the Federal Government shall contain the number of work-days of employment in seasonal agricultural services performed by each reportable worker employed during the preceding fiscal quarter. This information shall be provided to the Commissioner of the Immigration and Naturalization Service who shall determine which reportable workers are special agricultural workers. Information concerning them shall be provided to the Director of the Bureau of Census for use in—

(1) Estimating the number of special agricultural workers employed in seasonal agricultural services;

(2) Determining the average number of work-days performed by special agricultural workers; and

(3) Reporting to the Congress.

(h) Any person or entity who employs a reportable worker in seasonal agricultural services will meet the requirements of this regulation when—

(1) Accurate records are kept and reports are made as required under this part to the Federal Government;

(2) Accurate records are kept and reports are made as required under this part to each replenishment agricultural worker;

(3) The same transportation provided to any replenishment agricultural worker is provided to any other worker;

(4) There is no discrimination against any replenishment agricultural worker; and

(5) A replenishment agricultural worker is not knowingly furnished false or misleading information concerning the terms, conditions, or existence of agricultural employment with respect to the disclosure, posting, and recordkeeping requirements found in Sections 301 (a), (b), and (c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 et seq.

(i) An employer of a reportable worker employed in seasonal agricultural services who is subject to the requirements of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 et seq.) and/or MSPA is required to comply with both the requirements of this part and the statutory labor standards protections provided by FLSA and/or MSPA.

(j) The Secretary of Labor may impose sanctions pursuant to Section 210A(f)(4)(C) of the INA, which incorporate the penalty provisions of MSPA. Accordingly, these regulations provide that the Secretary of Labor is empowered to impose an assessment and to collect a civil money penalty of not more than $1,000 for each violation, to seek a temporary or permanent restraining order in a United States District Court, and to seek the imposition of criminal penalties under 18 U.S.C. 1001.

(k) Subparts A and B set forth the substantive regulations relating to any employer of a reportable worker employed in seasonal agricultural services. These subparts cover the applicability of the Act, the recordkeeping and reporting requirements, antidiscrimination protections, and prohibition against furnishing false statements, and equal transportation requirements.

(l) Subpart C sets forth enforcement responsibility and procedure.

(m) Subpart D sets forth the rules of practice for administrative hearings on the assessment of civil money penalties.

(n) The Department of Labor has developed two (2) forms for carrying out the purposes of the Act:

(1) The optional form (WH–501R) is offered to assist in carrying out the requirement that each replenishment agricultural worker receive a report each pay period in the form of a certificate from each employer indicating the number of work-days (any day with at least four (4) hours worked) employed in seasonal agricultural services; and

(2) The Work-Day Report (Form ESA–92) required to be submitted to the Federal Government, to certify the number of work-days performed by each reportable worker employed in seasonal agricultural services each quarter in which any reportable worker was employed in seasonal agricultural services for at least one work-day.

**§ 502.2 Definitions pertaining solely to a reportable worker employed in seasonal agricultural services.**

For purposes of this part:

(a) "Act" and "INA" mean the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986 (IRCA 8 U.S.C. 1101 et seq.), with references particularly to sections 210 and 210A.

(b) "Administrator" means the Administrator of the Wage and Hour Division, Employment Standards Administration, United States Department of Labor, and such authorized representatives as may be designated by the Administrator to perform any of the functions of the Administrator under this part.

(c) "Administrative Law Judge" means a person appointed as provided in Title 5 U.S.C. and qualified to preside at hearings under 5 U.S.C. 3105. "Chief Administrative Law Judge" means the Chief Administrative Law Judge, United States Department of Labor, Washington, DC 20036.

(d) "Alien 'A' Number" refers to an INS Alien Registration Number assigned to each alien.

(e) "DOL" means the United States Department of Labor.

(f) "Employee," "employer," "employment," and "independent contractor" are defined for purposes of the INA in regulations issued by INS at 8 CFR 274a.1, which definitions are incorporated into this part. They are restated in part and set forth below for information purposes only.

(1) "Employee" means an individual who provides services or labor for an employer for wages or other remuneration but does not mean independent contractors as defined in this part.

(2) "Employer" means a person or entity, including an agent or anyone acting directly or indirectly in the interest thereof, who engages the services or labor of an employee to be performed in the United States for wages or other remuneration. In the case of an independent contractor or contract labor or services, the term "employer" shall mean the independent contractor or contractor and not the person or entity using the contract labor;

(3) "Employment" means any service or labor performed by an employee for an employer within the United States.

(4) "Independent contractor" includes individuals or entities who carry on independent business, contract to do a piece of work according to their own means and methods, and are subject to control only as to results. Whether an individual or entity is an independent contractor, regardless of what the individual or entity calls itself, will be determined on a case-by-case basis. Factors to be considered in that determination include, but are not limited to, whether the individual or entity: Supplies the tools or materials; makes services available to the general public; works for a number of clients at the same time; directs the order or sequence in which the work is to be done; and determines the hours during which the work is to be done. The use of labor or services of an independent contractor is subject to the restrictions

in section 274A(a)(4) of the Act and 8 CFR 274a.5.

(g) "Employment Standards Administration" means the agency within the Department of Labor (DOL), which includes the Wage and Hour Division, and which is charged with carrying out certain functions of the Secretary under section 210A of the INA.

(h) "Exempt person" means a person or entity who would be subject to the provisions of the MSPA but for paragraph (1) or (2), or both, of section 4(a) of MSPA.

(i) "Form I-9" is an INS Form, "Employment Eligibility Verification" (EEV), which reflects the requirements established under section 274A(9)(b) of INA requiring employers to examine documents which establish the identity and employment eligibility of individuals hired since November 6, 1986. The EEV information must be recorded on a INS Form I-9 and be made available for inspection by INS and/or DOL representatives.

(j) "Immigration and Naturalization Service (INS)" is the component of the U.S. Department of Justice which is responsbile for administering the INA.

(k) "Man-day". See "Work-day".

(l) "MSPA" refers to the Migrant and Seasonal Agricultural Worker Protection Act (29 USC 1801 et seq.), and is referred to in section 210A of INA. MSPA provides for the protection of migrant and seasonal agricultural workers and for the registration of contractors of migrant and seasonal agricultural labor.

(m) "Replenishment Agricultural Worker (RAW)" is an alien (to be identified with an INS Alien Registration Number in a series within the A 90000000 series to be incorporated in these regulations when announced by INS at a later date) who is admitted during FY 1990 through FY 1993 for lawful temporary resident status or for the adjustment of status to lawful temporary residency to meet a shortage of workers employed in seasonal agricultural services.

(n) "Reportable Worker" is an alien employed in seasonal agricultural services who was admitted with lawful temporary resident status or whose status was adjusted to lawful temporary residency, and who is identified by an INS Alien Registration Number in the A 90000000 series. This series includes (1) a legalized temporary resident alien admitted under section 245A of the INA, (2) a temporary resident alien-special agricultural worker admitted under section 210 of the INA, and (3) an anticipated temporary resident alien-replenishment agricultural worker admitted between FY 1990 and FY 1993 under section 210A of the INA.

(o)(1) "Seasonal agricultural services" as provided by section 210(h) of the Act means "the performance of field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture".

(2) The Department of Agriculture regulation, 7 CFR Part 1d, definitions of "field work", "horticultural specialties", "fruits", "vegetables" and "other perishable commodities" are incorporated in this part. They are set forth below for information purposes only:

(i) "Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, the drying, processing, or packing of fruits, vegetables, and other perishable commodities in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural land are included. Supervising any of these activities shall be considered performing the activities.

(ii) "Horticultural specialties" means field grown, containerized, and greenhouse produced nursery crops which include juvenile trees, shrubs, seedings, budding, grafting and understock, fruit and nut trees, fruit plants, vines, ground covers, foliage and potted plants, cut flowers, herbaceous annuals, biennials and perennials, bulbs, corms, and tubers.

(iii) "Fruits" means the human edible parts of plants which consist of the mature ovaries and fused other parts or structures, which develop from flowers or inflorescence.

(iv) "Vegetables" means the human edible leaves, stems, roots, or tubers of herbaceous plants.

(v) "Other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of field work, and have critical and unpredictable labor demands. This is limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties, spanish reeds (arundo donax), spices, sugar beets, and tobacco. This is an exclusive list, and anything not listed is excluded. Examples of commodities that are not included as perishable commodities are animal aquacultural commodities, birds, dairy products, earthworms, fish including oysters and shellfish, forest products, fur bearing animals and rabbits, hay and other forage and silage, honey, horses and other equines, livestock of all kinds including animal specialties, poultry and poultry products, sod, sugar cane, wildlife, and wool.

(3) For purpose of these regulations, "seasonal agricultural services" include field work related to hay, sod, and sugar cane. The requirement of reporting on these commodities does not constitute evidence that they are eligible commodities for purposes of the special agricultural worker program. They are included to enable the Federal Government and the individual replenishment agricultural worker to obtain data on work on these commodities which will be needed if it is ultimately determined that they are eligible commodities. This regulation will be amended in accordance with the final disposition of the litigation concerning the application of sections 210 and 210A to these commodities.

(p) "Secretary" means the Secretary of Labor or the Secretary's designee.

(q)(1) "Solicitor of Labor" means the Solicitor, United States Department of Labor, and includes employees of the Solicitor of Labor designated by the Solicitor to perform functions of the Solicitor under this part.

(2) "Associate Solicitor for Fair Labor Standards" means the Associate Solicitor, who, among other duties, is in charge of litigation for MSPA, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, or the Associate Solicitor's designee.

(3) "Regional Solicitors" means the attorneys in charge of the various regional offices of the Office of the Solicitor, or their designees.

(r) "Special Agricultural Worker" (SAW) is (1) an alien granted temporary resident alien status as a result of an application filed pursuant to section 210 of the INA, establishing residence in the United States and employment in seasonal agricultural services for at least 90 work-days during the 12-month period ending May 1, 1986; and (2) a replenishment agricultural worker (RAW) granted temporary residency pursuant to section 210A of the INA.

(s) "Work-day" means a calendar day during which at least 4 hours of work in seasonal agricultural services is

performed. If one worker performs seasonal agricultural services for more than one employer on any one day, only one work-day will be counted.

**Note:** The alternative term "work-day" is adopted and incorporated into the text of this part to distinguish it from the term "man-day" as used in both the Fair Labor Standards Act (FLSA) and the MSPA, which in those acts means any calendar day when at least one hour of work is performed.

**§ 502.3 Waiver of rights prohibited.**

No person shall seek to have any worker waive rights conferred under section 210A of the INA or under these regulations. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or these regulations shall be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or these regulations. This does not prevent agreements to settle private litigation.

**§ 502.4 Investigation authority of Secretary.**

The Secretary, either pursuant to a complaint or otherwise, may investigate and, in connection therewith, inspect such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Secretary to determine compliance under section 210A of the INA or these regulations.

**§ 502.5 Prohibition on interference with Department of Labor officials.**

No person shall interfere with any official of the Department of Labor assigned to perform an investigation, inspection or law enforcement function pursuant to the INA and these regulations during the performance of such duties. The Wage and Hour Division of the Employment Standards Administration will seek such action as it deems appropriate, including an injunction to bar any such interference with an investigation and/or assess a civil money penalty therefor. Federal statutes which prohibit persons from interfering with a Federal officer in the course of official duties are found at 18 U.S.C. 111 and 18 U.S.C. 1114.

**§ 502.6 State Employment Service certificate form.**

Pursuant to Section 274A of the INA, any State Employment Service may voluntarily establish a system to perform employment eligibility verification for employers when referring job applicants for employment vacancies listed through the local State Employment Service offices. See 8 CFR 274a.6. In order that each employer can identify the reportable workers subject of this part, the State Employment Service certificate furnished to the employer must include the INS Alien Registration Number, if any, for each applicant referred for agricultural employment.

## Subpart B—Employment and Reporting Requirements

**§ 502.10 Requirements for Reporting and Employing a Reportable Worker Employed in Seasonal Agricultural Services.**

Effective beginning October 1, 1988, any person employing a reportable worker in seasonal agricultural services shall do the following:

(a) *Identification of a reportable worker.* (1) When completing the I–9 at the time of hiring, identify any reportable worker subject to these regulations. A reportable worker is identified as a worker with an INS Alien Registration Number in the A 90000000 series employed in seasonal agricultural services;

(2) When employment eligibility has been verified by the State Employment Service, the Alien Registration Number, if any, shall be set forth on the certification furnished to the agricultural employer by the State Employment Service.

(b) *Report to the Federal Government.* (1) For the period October 1, 1988, through September 30, 1992, furnish to the Federal Government each quarter a certificate (Form ESA–92) containing the information specified in this part, formulated from information derived from employment records maintained, on any reportable worker employed in seasonal agricultural services; and

(2) Furnish accurate, complete, and legible information in the certificate (Form ESA–92) to the Federal Government.

(c) *Report to the worker.* (1) For the period October 1, 1989, through September 30, 1992, furnish to any replenishment agricultural worker (identified by an INS Alien Registration Number in a series that INS will announce at a later date), employed in seasonal agricultural services, a report on each pay day containing the information specified in this part, formulated from employment records maintained; and

(2) Furnish accurate, complete, and legible information in the report to the replenishment agricultural worker.

(d) *Worker's rights.* (1) Not perform any act of discrimination against a replenishment agricultural worker;

(2) Provide the same transportation arrangements or assistance provided any replenishment agricultural worker to all other workers; and

(3) Not provide false or misleading information concerning the terms, conditions, or existence of agricultural employment to a replenishment agricultural worker.

**§ 502.11 Recordkeeping.**

(a) Any person employing a reportable worker in seasonal agricultural services shall maintain for each such worker the records listed below for the period October 1, 1988, through September 30, 1992. Records may be maintained and preserved in any recordkeeping format, provided they are accessible, legible, and provided to a Department of Labor representative upon request. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be provided to the Department of Labor representative within 72 hours of a request from such representative.

(1) Name in full, INS Alien Registration Number, and social security account number;

(2) Local address including ZIP code and permanent address;

(3) Crop worked and tasks performed;

(4) Hours worked each day; and

(5) A copy of each—

(i) Dated and signed Work-Day Report (Form ESA–92) submitted to the Federal Government; and

(ii) Dated report provided to any replenishment agricultural worker of the number of work-days employed in seasonal agricultural services and the period covered by the report. The optional form WH–501R may be used for this purpose.

(b)(1) Records required by paragraph (a) of this section shall be maintained for three years, except with regard to such records on employment of replenishment agricultural workers.

(2) Records on employment of replenishment agricultural workers required by paragraph (a) of this section shall be maintained for five years.

(c) If subject to the requirements of MSPA, refer to 29 CFR 500.80 for the additional recordkeeping requirements.

(d) If subject to the requirements of FLSA, refer to 29 CFR Part 516 for the additional recordkeeping requirements.

**§ 502.12 Reporting to the Federal Government.**

(a) For the period beginning October 1, 1988, through September 30, 1992, any person employing a reportable worker in seasonal agricultural services shall

provide a certified report each quarter regarding each such worker's employment to the Federal Government.

(b) A reportable worker is any worker having an INS alien registration number ("A" Number) in the A 90000000 series who was employed in seasonal agricultural services at any time during the quarter reported. The alien registration number is furnished by the resident alien when the Form I-9 is completed at the time of hiring (or by a State Employment Service Agency on the certification of employment eligibility verification furnished the employer when referring an employee for agricultural employment).

(c) Each such worker's employment to be reported to the Federal Government shall be certified using the required form, Work-Day Report, Form ESA-92. Copies of Form ESA-92 can be obtained from the U.S. Departments of Labor or Agriculture and can be copied or reproduced. The signed and dated report shall include the employer name, address, telephone number (including area code), employer identification number, type of agricultural business, and crops on which such workers were employed. Other information furnished in the ESA-92 is derived from records required to be kept in section 502.11. This information for each reportable worker employed in seasonal agricultural services for one or more work-days during a calendar quarter is the following:

(1) Resident alien's name and INS Alien Registration Number; and

(2) The number of work-days (any day with at least four (4) hours of work) of employment performed by any alien during the fiscal quarter; and

(3) If hay, sod, or sugar cane, the crop in which the worker was employed.

(d) The information provided for this certified report must be tabulated and reported to the Federal Government each fiscal quarter. The first period to be reported will be October 1 through December 31, 1988. The last period to be reported will be July 1 through September 30, 1992. The reporting shall follow a regular sequence each year as follows:

(1) For the period October 1 thru December 31, certified report due by the following January 16;

(2) For the period January 1 thru March 31, certified report due by the following April 17;

(3) For the period April 1 thru June 30, certified report due by the following July 17; and

(4) For the period July 1 thru September 30, certified report due by the following October 16.

(e) The employing entity will keep a copy of the completed ESA-92s furnished to the Federal Government for no less than three years.

(f) The Form ESA-92 will be addressed to "Committee for Employment Information on Special Agricultural Workers" and mailed to P.O. Box XXXX, Washington, D.C. XXXX.

**§ 502.13 Reporting to the replenishment agricultural worker.**

(a) For the period beginning October 1, 1989, through September 30, 1992, any person employing any replenishment agricultural worker (identified by an INS Alien Registration Number in a series within the A 90000000 series that INS will announce at a later date) shall provide such worker, with each wage payment, but no less often than twice per month, a report certifying such alien's employment.

(b) The report shall include the date the report is furnished to the employee, employer name, address, telephone number (including area code), employer identification number, and type of agricultural business. Other information furnished by any such employing entity is derived from permanent records required to be kept by § 502.11. This information is the following:

(1) Replenishment agricultural worker's name, local address (including ZIP code), permanent address, INS Alien Registration Number, and social security account number;

(2) The date paid, the pay period covered by the report and the number of work-days (any day with at least four (4) hours of work) of employment performed by the replenishment agricultural worker in seasonal agricultural services during the pay period; and

(3) The crop worked and the tasks performed.

(c) Any such replenishment agricultural worker's employment may be reported using the WH501R, a pay stub reprinted for this use which also meets the requirements of MSPA. [Copies of the Form WH-501R can be obtained from the Departments of Labor and Agriculture and can be copied or reproduced.] Completion of the form will meet the requirements of these regulations and MSPA.

(d) Use of the WH501R is optional, and the requirements of this part will be met as long as the information specified in § 502.13(b) is provided to the worker at the time of each wage payment, and no less than twice per month.

(e) The employing entity shall keep a copy of each completed WH501R (or whatever form is used to report) furnished to the replenishment agricultural worker for no less than five years.

**§ 502.14 Accuracy of information furnished.**

(a) If subject to MSPA, no employer shall knowingly provide false of misleading information on the terms, conditions or existence of agricultural employment required to be disclosed by MSPA (and 29 CFR Part 500) to any worker subject to MSPA.

(b) Any employer who is exempt under either MSPA section 4(a)(1) or 4(a)(2) shall not knowingly provide false or misleading information to a replenishment agricultural worker concerning the following terms, conditions, or existence of agricultural employment which are described in subsections (a), (b), or (c) of section 301 of MSPA:

(1) With respect to disclosures to workers when an offer of employment is made, at the place of recruitment, or any other time—

(i) The place of employment;

(ii) The wage rates to be paid;

(iii) The crops and kinds of activities on which the worker may be employed;

(iv) The period of employment;

(v) The transportation and any other employee benefit to be provided, if any, and any costs to be charged for each of them;

(vi) The existence of any strike or other concerted work stoppage, slowdown, or interruption of operations by employees at the place of employment; and

(vii) The existence of any arrangements with any owner or agent of any establishment in the area of employment under which a farm labor contractor or an employer is to receive a commission or any other benefit resulting from any sales by such establishment to the workers;

(2) With respect to any poster at the place of employment, information regarding the rights and protections afforded such workers; and

(3) With respect to records preserved by the employer and provided to employee at time of wage payment—

(i) The basis on which wages are paid;

(ii) The number of piecework units earned, if paid on a piecework basis;

(iii) The number of hours worked per day;

(iv) The total pay period earnings;

(v) The specific sums withheld; and

(vi) The net pay.

**§ 502.15 Discrimination prohibited.**

(a) It is a violation of the Act and these regulations for any person to

intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any replenishment agricultural worker who has:

(1) Filed a complaint under or related to section 210A of the INA or this part;

(2) Instituted or caused to be instituted any proceedings related to section 210A of the INA or this part;

(3) Testified or is about to testify in any proceeding under or related to section 210A of the INA or this part; or

(4) Exercised or asserted on behalf of themselves or others any right or protection afforded by section 210A of the INA or this part;

(b) Any worker who believes, with just cause, that the worker has been discriminated against by any person in violation of this section may, no later than 180 days after such violation occurs, file a complaint with the Secretary alleging such discrimination.

**§ 502.16 Prohibition on providing false information when reporting to a replenishment agricultural worker or to the Federal Government.**

(a) Any person or entity who employs a reportable worker in seasonal agricultural services during the period beginning October 1, 1988, and ending September 30, 1992, shall not furnish a certificate required under these regulations containing false information to the Federal Government.

(b) Any person or entity who employs a replenishment agricultural worker during the period beginning October 1, 1989, and ending September 30, 1989, shall not furnish a certificate required under these regulations to the individual replenishment agricultural worker which contains false information.

(c) Information, statements and data submitted in compliance with provisions of the Act or these regulations are protected as follows: Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be subject to 18 U.S.C. 1001 and fined not more than $10,000 or imprisoned not more than five years, or both.

**§ 502.17 Equal Transportation Provision.**

No person shall discriminate against any worker by failing to provide the same transportation arrangements or assistance (generally comparable in expense and scope) as provided to a replenishment agricultural worker.

## Subpart C—Enforcement

**§ 502.20 Enforcement.**

The investigations, inspections and law enforcement functions to carry out the provisions of section 210A of the INA, as provided in these regulations for enforcement by the Wage and Hour Division, pertain to

(a) The maintenance of records and the reporting to the Federal Government of those items required under §§ 502.11 and 502.12 of this part;

(b) The maintenance of records and the reporting to an individual replenishment agricultural worker of those items required under §§ 502.11 and 502.13 of this part;

(c) The truth of disclosures, whether in writing or not, of terms, conditions, or existence of agricultural employment offered to a replenishment agricultural worker under § 502.14 of this part;

(d) The anti-discrimination protections to any replenishment agricultural worker as required under § 502.15 of this part;

(e) The accuracy of information provided as required to a replenishment agricultural worker and the Federal Government under § 502.16 of this part; and

(f) The providing of the same transportation (comparable in expense and scope) to other workers as provided to a replenishment agricultural worker as required under § 502.17 of this part.

**§ 502.21 General.**

(a) Whenever the Secretary believes that the provisions of section 210A of the INA or these regulations have been violated, such action shall be taken and such proceedings instituted as deemed appropriate, including (but not limited to) the following:

(1) Petition any appropriate District Court of the United States for temporary or permanent injunctive relief to restrain violation of the provisions of the Act or this part by any person;

(2) Institute appropriate administrative proceedings, including the assessment of a civil money penalty against any person for a violation of the obligations of the Act or this part; or

(3) Refer any unpaid civil money penalty which has become a final and unappealable order of the Secretary or a final judgment of a court in favor of the Secretary to the Attorney General for recovery.

(b) The taking of any one of the actions referred to in paragraph (a) shall not be a bar to the concurrent taking of any other appropriate action.

**§ 502.22 Representation of the Secretary.**

(a) Except as provided in section 518(a) of Title 28, U.S. Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under section 210A of the Act.

(b) The Solicitor of Labor, through the authorized representatives, shall represent the Administrator and the Secretary in all administrative hearings under the provisions of section 210A of the Act and this part.

**§ 502.23 Civil money penalty assessment.**

(a) A civil money penalty in an amount not to exceed $1,000 may be assessed for each violation of section 210A of the Act or this part.

(b) A civil money penalty may be assessed by the Administrator for:

(1) Failing to furnish any certificate as required under sections 502.12 and 502.13 of this part;

(2) Furnishing a false statement as prohibited in section 502.16 of this part;

(3) Failing to provide the same transportation to any worker as provided for a replenishment agricultural worker as required in section 502.17 of this part;

(4) Knowingly furnishing false or misleading information to a replenishment agricultural worker concerning the terms, conditions, or existence of agricultural employment as prohibited in section 502.14 of this part;

(5) Discriminating against a replenishment agricultural worker as prohibited in section 502.15 of this part;

(6) Failing to keep the records required by section 502.11 of this part;

(7) Failing to furnish records required to be kept under these regulations to Department of Labor officials upon request as required by section 502.11 of this part;

(8) Interfering with the performance of an investigation or inspection in the United States as prohibited in section 502.5 of this part; or

(9) Any other violation of the regulations in this part or section 210A(b)(2) or (f) of the Act.

(c) In determining the amount of penalty to be assessed for any violation outlined in paragraph (a) of this section, the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations of the provisions of the Act or this part;

(2) The number of workers affected by the violation or violations;

(3) The seriousness of the violation or violations;

(4) Efforts made in good faith to comply with the provisions of the Act and the regulations in this part;

(5) Explanation by person charged with the violation or violations;

(6) Commitment to future compliance, taking into account the public interest and whether the person has previously violated the provisions of the Act; and

(7) The extent to which the worker suffered loss or damage.

**§ 502.24 Enforcement of Wage and Hour investigative authority.**

Section 502.4 of this part prescribes the investigation authority of the Wage and Hour Division for the purpose of enforcing section 210A of the Act and this part. The taking of any action to interfere with Department of Labor officials in the conduct of an investigation is prohibited by section 502.5 of this part and will subject such person or entity to such action as appropriate, including the assessment of civil money penalties, an injunction to bar interference with the investigation, and criminal penalties.

**§ 502.25 Civil money penalties—payment and collection.**

Where the assessment is directed in a final order by the Administrator, by an Administrative Law Judge, or by the Secretary, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof as finally determined, to the Administrator by certified check or by money order, made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred.

## Subpart D—Administrative Proceedings

### General

**§ 502.30 Establishment of procedures and rules of practice.**

This subpart codifies and establishes the procedures and rules of practice necessary for the administrative enforcement of the Act.

**§ 502.31 Applicability of procedures and rules.**

The procedures and rules contained in this subpart prescribe the administrative process necessary for a determination to impose an assessment of civil money penalties for violations of the Act or of these regulations. The "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to this subpart, as provided in section § 502.38 of this part.

### Procedures Relating to Hearing

**§ 502.32 Written notice of determination required.**

Whenever the Secretary determines to assess a civil money penalty for a violation of the Act or this part, the person against whom such penalty is assessed shall be notified in writing of such determination.

**§ 502.33 Contents of notice.**

The notice required by § 502.32 of this part shall:

(a) Set forth the determination of the Secretary and the reason or reasons therefore;

(b) Set forth a description of each violation and the amount assessed for each violation;

(c) Set forth the right to request a hearing on such determination;

(d) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the Secretary shall become final and unappealable; and

(e) Set forth the time and method for requesting a hearing, and the procedures relating thereto, as set forth in § 502.34 of this part.

**§ 502.34 Request for hearing.**

(a) Any person desiring to request an administrative hearing on a civil money penalty assessment pursuant to this part shall make such request in writing to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, no later than thirty (30) days after the service of the notice referred to in § 502.33 of this part.

(b) No particular form is prescribed for any request for hearing permitted by this subpart. However, any such request shall:

(1) Be typewritten or legibly written on size 8½" x 11" paper;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for hearing must be received by the Administrator at the address set forth in paragraph (a) of this section, within the time set forth in that paragraph. For the affected person's protection, if the request is by mail, it should be by certified mail, return receipt requested.

### Rules of Practice

**§ 502.38 General.**

Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR Part 18 shall apply to administrative proceedings under this subpart.

**§ 502.39 Service of determinations and computation of time.**

(a) Service of a determination to assess a civil money penalty shall be made by personal service to the individual, officer of a corporation, or attorney of record or by mailing the determination to the last known address of the individual, officer, or attorney. If done by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by addressee;

(b) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day; and

(c) When a determination is served on a party by mail, five (5) days shall be added to the prescribed period during which the party has the right to request a hearing on the determination.

**§ 502.40 Commencement of proceeding.**

Each administative proceeding permitted under the Act and these regulations shall be commenced upon receipt of a timely request for hearing filed in accordance with section 502.34 of this part.

**§ 502.41 Designation of record.**

(a) Each administrative proceeding instituted under the Act and this part shall be identified of record by a number preceded by the year and the letters "S/RAW".

(b) The number, letter, and designation assigned to each such proceeding shall be clearly displayed on each pleading, motion, brief, or other formal document filed and docketed of record.

**§ 502.42 Caption of proceeding.**

(a) Each administrative proceeding instituted under the Act and this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows: In The Matter of ———, Respondent.

(b) For the purposes of administrative proceedings under the Act and this part the "Secretary of Labor" shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

**Referral for Hearing**

**§ 502.43 Referral to Administrative Law Judge.**

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 502.34 of this part, the Secretary, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, shall, by Order of Reference, promptly refer an authenticated copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the person requesting such hearing or by the authorized representative of such person, to the Chief Administrative Law Judge, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under this part.

(b) A copy of the Order of Reference, together with a copy of this part, shall be served by counsel for the Secretary upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

**§ 502.44 Notice of docketing.**

The Chief Administrative Law Judge shall promptly notify the parties of the docketing of each matter.

**§ 502.45 Service upon attorneys for the Department of Labor—number of copies.**

Two (2) copies of all pleadings and other documents required for any administrative proceeding provided by this part shall be served on the attorneys for the Department of Labor. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding. Procedures Before Administrative Law Judge.

**§ 502.46 Appearances; representation of the Department of Labor.**

The Associate Solicitor, Division of Fair Labor Standards, and such other counsel as may be designated, shall represent the Department in any proceeding under this part.

**§ 502.47 Consent findings and order.**

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of any evidence for a reasonable time to permit negotiation of an agreement containing consent findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Administrative Law Judge, after consideration of the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of an agreement being reached which will result in a just disposition of the issues involved.

(b) *Content.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the notice of administrative determination (or amended notice, if one is filed), and the agreement;

(3) A waiver of any further procedural steps before the Administrative Law Judge; and

(4) A waiver of any right to challenge or contest the validity of the findings and order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their authorized representatives or their counsel may:

(1) Submit the proposed agreement for consideration by the Administrative Law Judge; or

(2) Inform the Administrative Law Judge that agreement cannot be reached.

(d) *Disposition.* In the event an agreement containing consent findings and an order is submitted within the time allowed therefor, the Administrative Law Judge, within thirty (30) days thereafter, shall, if satisfied with its form and substance, accept such agreement by issuing a decision based upon the agreed findings.

**§ 502.48 Decision and Order of Administrative Law Judge.**

(a) The Administrative Law Judge shall prepare, as promptly as practicable after the expiration of the time set for filing proposed findings and related papers a decision on the issues referred by the Secretary.

(b) The decision of the Administrative Law Judge shall be limited to a determination whether the respondent has violated the Act or these regulations and the appropriateness of the remedy or remedies imposed by the Secretary. The Administrative Law Judge shall not render determinations on the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision of the Administrative Law Judge, for purposes of the Equal Access to Justice Act (5 U.S.C. 504), shall be limited to determinations of attorney fees and/or other litigation expenses in adversary proceedings requested pursuant to section 502.34 of this part which involve the imposition of a civil money penalty assessed for a violation of the Act or this part.

(d) The decision of the Administrative Law Judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may be to affirm, deny, reverse, or modify, in whole or in part, the determination of the Secretary. The reason or reasons for such order shall be stated in the decision.

(e) The Administrative Law Judge shall transmit to the Chief Administrative Law Judge the entire record including the decision. The Chief Administrative Law Judge shall serve copies of the decision on each of the parties.

(f) The decision when served shall constitute the final order of the Secretary unless the Secretary, pursuant to section 210A(f)(4) of the INA modifies or vacates the decision and order of the Administrative Law Judge.

(g) Except as provided in §§ 502.48 through 502.53 of this part, the administrative remedies available to the parties under the Act will be exhausted upon service of the decision of the Administrative Law Judge.

## Modification or Vacation of Order of Administrative Law Judge

### § 502.49 Authority of the Secretary.

The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(a) Is inconsistent with a policy or precedent established by the Department of Labor;

(b) Encompasses determinations not within the scope of the authority of the Administrative Law Judge; or

(c) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive, the Secretary may modify or vacate such Decision and Order; or

(d) Otherwise warrants modifying or vacating.

### § 502.50 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 500.51. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the proceeding and on the Chief Administrative Law Judge.

### § 502.51 Implementation by the Secretary.

(a) Whenever, on the Secretary's own motion or upon acceptance of a party's petition, the Secretary believes that a Decision and Order may warrant modifying or vacating, the Secretary shall issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

### § 502.52 Filing and service.

(a) *Filing.* All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) *Number of copies.* An original and two copies of all documents shall be filed.

(c) *Computation of time for delivery by mail.* Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date.

(d) *Manner and proof of service.* A copy of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service under this section shall be by personal delivery or by mail. Service by mail is deemed effected at the time of mailing to the last known address.

### § 502.53 Responsibility of the Office of Administrative Law Judges.

Upon receipt of the Secretary's Notice of Intent to Modify or Vacate the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall, within fifteen (15) days, index, certify and forward a copy of the complete hearing record to the Secretary.

### § 502.54 Final decision of the Secretary.

(a) The Secretary's final Decision and Order shall be issued within 120 days from the Notice of intent granting the petition, and shall be served upon all parties and the Chief Administrative Law Judge, in person or by certified mail.

(b) Upon receipt of an Order of the Secretary modifying or vacating the Decision and Order of an Administrative Law Judge, the Chief Administrative Law Judge shall substitute such Order for the Decision and Order of the Administrative Law Judge.

### § 502.55 Stay pending decision of the Secretary.

(a) The filing of a petition seeking review by the Secretary of a Decision and Order of an Administrative Law Judge, pursuant to § 502.50 does not stop the running of the thirty-day time limit in which respondent may file an appeal to obtain a review in the United States District Court of an administrative order, under section 210A of the INA, as provided in section 503(b)(c) of the MSPA, unless the Secretary issues a Notice of Intent pursuant to § 502.51.

(b) In the event a respondent has filed a notice of appeal of the Administrative Law Judge's Decision and Order in a United States District Court prior to receipt of the Secretary's Notice of Intent, the Secretary shall seek a stay of proceedings in such United States District Court.

(c) Where the Secretary has issued a Notice of Intent, the time for filing an appeal of a Decision and Order issued under this part, shall commence from the date of the issuance of the Secretary's final decision, as provided in § 502.54.

## Record

### § 502.56 Retention of official record.

The official record of every completed administrative hearing provided by this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge.

### § 502.57 Certification of official record.

Upon receipt of timely notice of appeal to a United States District Court of a decision and Order issued under this part, the Chief Administrative Law Judge shall promptly certify and file with the appropriate United States District Court, a full, true, and correct copy of the entire record, including the transcript of proceedings.

**Editorial Note.**—The Department presents forms in the Appendix which satisfy certain disclosure and recordkeeping aspects of the Act and the regulations. These forms, however, will not appear in the Code of Federal Regulations.

BILLING CODE 4510-27-M

**APPENDIX A—WORK DAY REPORT, ESA-92**

WORK-DAY REPORT

Form - ESA 92

Pursuant to section 210A(b)(2) of the Immigration and Nationality Act, this report is to be submitted to the Committee for Employment on Special Agricultural Workers, P.O. Box XXXX, Washington, D.C. XXXXX, for (CHECK APPROPRIATE BOXES):

1. Fiscal Year (FY) 1989 ___ FY 1990 ___ FY 1991 ___ FY 1992 ___

2. October 1 through December 31 (due January 16) ___ April 1 through June 30 (due July 17) ___
   January 1 through March 30 (due April 17) ___ July 1 through September 30 (due October 16) ___

3. Employer Name Daytime Telephone Number Area Code _____ Number _____

4. Employer Identification Number _____

Employer Address including zip code

5. All crops on which reportable workers were employed:

6. The following employees had at least one day of 4 hours worked (a work-day) in seasonal agricultural services:

| Name of Worker | Crop if Hay, Sod or Sugar Cane | INS Alien Registration Number | Number of Days in which 4 hours or more were worked. |
|---|---|---|---|
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THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE EMPLOYER TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE.

- See instructions on reverse.

7. Signature and Date

INSTRUCTIONS FOR COMPLETION OF FORM ESA-92
(For further details, refer to Regulations, 29 CFR Part 502)

The authority for this certification to the Federal Government is contained in Section 210A of the Immigration and Nationality Act as amended by the Immigration Reform and Control Act of 1986 (IRCA), Public Law 99-603. This form is to report employment information of certain workers employed in seasonal agricultural services. This information is used to identify labor shortages and, if necessary, to replenish the work force for this type of employment. A worker whose employment is to be reported is identified by Immigration and Naturalization Service (INS) as an individual with an Alien Registration Number (if applicable, submitted by the employee on the Form I-9) in the A 90000000 series and performing work in Seasonal Agricultural Services.

Performing work in "Seasonal Agricultural Services" means performing field work related to planting, cultural practices, cultivating, growing and harvesting of fruits and vegetables of every kind and other perishable commodities* as defined in regulation 7 CFR part 1d. For purposes of this regulation only, "seasonal agricultural services" also includes field work performed in the following "contested crops": hay, sod, and sugar cane. The requirement of reporting these commodities does not constitute evidence that they are eligible commodities for purposes of the SAW program. The reporting requirements will enable the Federal Government and the replenishment agricultural worker to obtain needed data in the event that it is later decided that these commodities are SAW eligible.

"Field work" is defined as work performed on agricultural land for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities*. These activities have to be performed on agricultural land in order to produce fruits, vegetables, and other perishable commodities*, as opposed to those activities that occur in a processing plant or packinghouse not on agricultural lands. Thus, drying, processing, or packing of fruits, vegetables, and other perishable commodities* in the field and the "on the field" loading of transportation vehicles are included. Operations using a machine, such as a picker or a tractor, to perform these activities on agricultural lands are included. Supervising any of these activities shall be considered performing the activities.

"Agricultural lands" means any land, cave, or structure, such as a greenhouse, except packinghouses or canneries, used for the purpose of performing field work.

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*Fruits and vegetables of every kind and other perishable commodities INCLUDE the following:
All fruits and vegetables, including (but not limited to) berries, melons, tree fruits and nuts, table vegetables; also corn and small grains, cotton, soybeans; other perishable commodities are limited to Christmas trees, cut flowers, herbs, hops, horticultural specialties (field grown, containerized, and greenhouse produced nursery crops), spanish reeds (arundo donax), spices, sugar beets, and tobacco, as defined in 7 CFR Part 1d.

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*Examples of other commodities which are EXCLUDED are:
Animal aquacultural products, birds, dairy products, earthworms, fish including oysters and shellfish, flax, forest products, fur bearing animals and rabbits, honey, horses and other equines, livestock of all kinds including animal specialties, millet, milo, poultry and poultry products, sorghum, wildlife and wool.

---

"Contested crops" INCLUDE hay, sod, and sugar cane. Reports must be filed on field work performed by reportable workers in these crops.

## INSTRUCTIONS FOR COMPLETION OF FORM ESA-92 (CONTINUED)

This form is to certify employment information of certain workers employed in seasonal agricultural services in which the employer is required to provide to the Federal Government.

ITEM 1. Indicate the fiscal year for which the information is submitted.

ITEM 2. Indicate the quarter for which the information is submitted.

ITEM 3. Enter the complete legal name, address, and telephone number (including area code) of the employer.

ITEM 4. Enter the employer federal tax identification number.

ITEM 5. Indicate in this space the crops (such as "cucumbers" or "wheat") in which the workers were employed.

ITEM 6. With respect to each resident alien worker with an Alien Registration Number in the A 90000000 series who is employed in seasonal agricultural services at any time during the quarter reported, enter each worker's name, and INS alien registration number; the crop on which the worker was employed if hay, sod, or sugar cane; and the total number of work-days that each worker was employed in seasonal agricultural services. A "work-day" is defined as any day during which at least four (4) hours of work in seasonal agricultural services is performed. If one worker performs seasonal agricultural services for more than one employer on any one day, only one work-day will be counted.

THIS FORM MUST BE SIGNED AND DATED BY THE REPORTING EMPLOYER OR A DESIGNATED REPRESENTATIVE OF THE EMPLOYER. NOTE: STATEMENTS SUBMITTED IN COMPLIANCE WITH THIS ACT ARE SUBJECT TO 18 U.S.C. 1001.

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

Failure to accurately complete and mail this form within the time period specified in regulation 29 CFR 502 will be in violation of the Immigration and Nationality Act as amended by IRCA. The penalties imposed are contained in the statute and regulation 29 CFR 502.

Public reporting burden for this collection of information is estimated to average 20 1/2 minutes per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

## APPENDIX B—WAGE STATEMENT, WH-501R

Date of Report:

Employee _____ Social Security No. _____

Workweek Ending (Month, day, year)

Permanent Address _____ INS Alien Registration No. A _____

| Day/Date | Sun/ | Mon/ | Tues/ | Wed/ | Thurs/ | Fri/ | Sat/ |
|---|---|---|---|---|---|---|---|
| Starting Time | | | | | | | |
| Quitting Time | | | | | | | |
| Hours Worked | | | | | | | |
| Crop/Task / Units Done | | | | | | | |
| Rate of Pay (Hourly or Piece Rate) | | | | | | | |
| Daily Pay | | | | | | | |

Total Hours Worked In Week

Number Of Work-Days (At least 4 hrs worked each day)

Total Gross Pay

| ITEMIZED DEDUCTIONS | |
|---|---|
| FICA | |
| Federal Tax | |
| State Tax | |
| Rent | |
| Food | |
| Transportation | |
| Other | |
| Other | |
| Total Deductions | |
| Net Pay (Amount Due Employees) | Date Paid: |

Employer _____

Address _____

Social Security Employer I.D. No. _____

Any information which pertains to "work days" for the person named above is provided in accordance with section 210A of the Immigration and Nationality Act. See reverse for instructions.

Form WH-501R

Properly filled out, this optional form will satisfy the requirements of sections 201(d)(2) and (c)(2) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and will also satisfy the requirements of section 210A of the Immigration and Nationality Act (INA).

PAYROLL INFORMATION: Enter the month, day and year on which the employee's payroll workweek ends. Enter the calendar date of the day worked. Enter the time work started and ended each day. Enter the total time actually worked each day. Subtract bonafide meal periods. Crop/Task - Units done - Enter the kind of work (such as picking oranges per bin). Enter the number of units produced if the employee is paid on a piece work or task basis. Enter the hourly or piece rate of pay. Enter the amount of the daily pay computed at the hourly and/or piece rate.

NUMBER OF WORK-DAYS: For resident alien workers with INS registration number (a series that INS will announce at a later date) and performing work in seasonal agricultural services, enter the number of days that the worker worked at least four (4) hours.

ITEMIZED DEDUCTIONS: In addition to FICA (Social Security), federal tax, state, tax, and rent, food, and transportation deductions (if any), enter any other deductions and identify the purpose of each other deduction. Total Deductions - Enter total deductions in right column and then transfer to left. Subtract total deductions from total Gross Pay - Enter the result as Net Pay (Amount Due Employee). Enter date worker is paid.

Public reporting burden for this collection of information under both MSPA and the INA is estimated to average 2 minutes per response in addition to that incurred in the normal course of business, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Information Management, Department of Labor, Room N-1301, 200 Constitution Ave., NW., Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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OMB No.

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Tuesday
July 19, 1988

Part VI

# Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls in Electrical Transformers; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 761**

**[OPTS-62035G; FRL 3366-6]**

## Polychlorinated Biphenyls in Electrical Transformers

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA issued a proposed rule, published in the **Federal Register** of August 21, 1987 (52 FR 31738) which proposed amendments to the rules governing the use of polychlorinated biphenyls (PCBs) in transformers. Among other things, this document finalizes those amendments which are related to the installation of PCB Transformers for emergency or reclassification situations and, with modification, the use of an alternative label on PCB Transformer locations. It also modifies some existing enhanced electrical protection requirements on lower secondary voltage network transformers, and sets guidelines for bringing PCB Transformers previously assumed to be PCB-contaminated transformers into compliance with all applicable regulations. This document reflects changes made in response to comments on the proposed rule.

**DATE:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. Eastern Daylight Time on August 2, 1988. These amendments shall be effective September 1, 1988.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Acting Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202-554-1404), TDD-(202-554-0551).

**SUPPLEMENTARY INFORMATION:** Section 6(e) of the Toxic Substances Control Act (TSCA) generally prohibits the use of PCBs after January 1, 1978. The statute does, however, set forth two exceptions under which EPA may, by rule, allow a particular use of PCBs to continue. Under section 6(e)(2) of TSCA, EPA may allow PCBs to be used in a totally enclosed manner. TSCA also allows EPA to authorize the use of PCBs in a manner other than a totally enclosed manner if the Agency finds that the use "will not present an unreasonable risk of injury to health or the environment."

Public reporting burden for this collection of information is estimated to average 188 minutes per response, including time for reviewing instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

### I. Background

EPA promulgated a rule, which was published in the **Federal Register** of May 31, 1979 (44 FR 31514), to implement section 6(e) (2) and (3) of TSCA under 40 CFR Part 761. The rule, among other things, designated all intact, nonleaking capacitors, electromagnets, and transformers, other than railroad transformers, as "totally enclosed," thus permitting their use without specific authorizations or conditions. The Environmental Defense Fund (EDF) petitioned the U.S. Court of Appeals for the District of Columbia Circuit to review a number of provisions of the rule, including the portion of the rule that designated all intact and nonleaking capacitors, electromagnets, and transformers as "totally enclosed" (*Environmental Defense Fund, Inc.* v. *Environmental Protection Agency*, 636 F.2d 1267).

On October 30, 1980, the court, among other things, decided that there was insufficient evidence in the record to support the Agency's classification of transformers, capacitors, and electromagnets as totally enclosed. The court invalidated this portion of the rule and remanded the rule to EPA for further action.

As a consequence of the October 1980 decision, EPA undertook a number of rulemaking actions. One such rule was published in the **Federal Register** of August 25, 1982 (47 FR 37342) (hereafter, "PCB Electrical Use Rule"). This rule authorized, among other things, the continued use, until October 1, 1985, of PCB Transformers (electrical transformers containing greater than 500 ppm PCBs) in facilities involved in the handling of food or feed items, and authorized for the remainder of their useful life, the use of all other categories of non-railroad electrical transformers containing or contaminated with PCBs. In the PCB Electrical Use Rule, EPA made a determination that authorizing the use of these transformers for the remainder of their useful life (subject to certain conditions) did not present an unreasonable risk to public health or the environment. EPA's August 1982 decision to allow the continued use of electrical transformers containing PCBs was based on the reported low frequency of leaks and spills of PCBs from this equipment compared to the high costs associated with replacing this equipment with substitute transformers or requiring secondary containment to limit the spread of spilled materials. EPA determined that the most cost-effective means for reducing the risks posed by leaks and spills of PCBs from these transformers was to require routine inspections, repairs, and cleanup.

After promulgation of the PCB Electrical Use Rule, additional information came to EPA's attention which indicated that fires involving transformers that contain PCBs may occur more frequently than previously expected. Thus, EPA subsequently undertook an evaluation of the fire-related risks posed by the continued use of transformers that contain PCBs, and the costs and benefits of measures designed to reduce those risks. EPA issued a proposed rule, published in the **Federal Register** of October 11, 1984 (49 FR 39966), which contained EPA's determination that PCB Transformer fires (fires involving transformers containing greater than 500 parts per million (ppm) PCBs), particularly those fires which occur in or near commerical buildings, do present risks to human health and the environment. EPA reached this determination after considering the toxicity of materials which can be formed and released during fires involving this equipment, as well as the potential for human and environmental exposures to these materials from a single incident, and the expected frequency of incidents over the remaining useful life of this equipment.

The Agency issued a final rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170) (hereafter, the "PCB Transformer Fires Rule") that amended the PCB Electrical Use Rule. The PCB Transformer Fires Rule placed additional restrictions and conditions on the use of PCB Transformers, particularly PCB Transformers located in or near commerical buildings. Among other provisions, EPA banned the further installation of PCB Transformers in or near commercial buildings, required the removal of PCB Transformers that posed particularly high fire-related risks, and required the installation of enhanced electrical protection on all other PCB Transformers located in or near commerical buildings.

After the promulgation of the PCB Transformer Fires Rule, Mississippi Power Company (hereafter, "Mississippi Power") filed a petition for review of the rule. In the context of settlement negotiations, EPA agreed to issue, for publication in the **Federal Register**, a notice of interpretation and to propose to amend portions of the PCB Transformer Fires Rule.

EPA issued a Notice of Interpretation of the PCB Transformer Fires Rule, published in the **Federal Register** of December 31, 1986 (51 FR 47241), that clarified several provisions of the regulations governing the use of electrical transformers containing PCBs. The questions concerned: (1) The PCB Transformer registration requirements; (2) the requirement for the removal of stored combustibles near PCB Transformers; (3) the requirement for the reporting of fire-related incidents to the National Response Center; (4) the definition of commercial building; (5) the status of mineral oil transformers which are found to contain over 500 ppm PCBs; (6) the ban on the installation of PCB Transformers in or near commercial buildings; and (7) the requirement for the labeling of the exterior of PCB Transformer locations.

Mississippi Power also raised additional, more substantive issues regarding EPA's ban on the installation of PCB Transformers, the requirements for enhanced electrical protection of lower secondary voltage network PCB Transformers, and the requirement for the labeling of the exterior of PCB Transformer locations. First, Mississippi Power questioned whether EPA had intended to ban the installation of PCB Transformers in emergency situations (where no other non-PCB substitute is available) and the installation of retrofilled PCB Transformers when installed for purposes of reclassification. Further, Mississippi Power asked EPA to reconsider the requirement for enhanced electrical protection of lower secondary voltage network PCB Transformers because of space constraints in sidewalk vaults, lack of suitable (i.e., waterproof) fuse enclosures, and Mississippi Power's belief that the cost of fuse installation is two to four times higher than EPA originally estimated. Finally, Mississippi Power asked that EPA allow the use of alternative labels on PCB Transformer locations, when such labeling occurred voluntarily prior to the effective date of the PCB Transformer Fires Rule.

EPA evaluated the additional information submitted by Mississippi Power in the context of settlement negotiations and decided that the new information warranted a reconsideration of certain of the Agency's previous determinations. This rule presents the results of the Agency's further evaluations and finalizes, with some modification, the proposed amendments to the requirements of the PCB Transformer Fires Rule.

EPA received 15 comments on the proposed rule, four of which were received after the close of the comment period, October 5, 1987. There were no requests for an informal hearing.

EPA has considered all the comments received in response to the proposed rule (as well as comments received after the close of the comment period) and has modified the final rule where appropriate. Some comments either did not address issues in the proposed amendments, misinterpreted a proposed requirement, or, in one case, raised an interpretive issue, outside the scope of this rule, that cannot be immediately resolved. This issue concerns enhanced electrical protection on radial and low secondary voltage network PCB Transformers. EPA considers the issue outside the scope of the rule because the rule addresses only issues agreed upon in the Settlement Agreement.

In order to reduce the fire-related risks posed by the use of PCB Transformers, the July 1985 Transformer Fires Rule required, among other things, enhanced electrical protection on all radial PCB Transformers and low secondary voltage network PCB Transformers in use in or near commercial buildings by October 1, 1990. The rule called for current-limiting fuses or other equivalent technology which detect high current faults and provide for complete deenergization of the transformer within certain time limitations before transformer rupture occurred. The August 1987 proposed amendment retained that requirement, but offered, as an option to this protection, transformer removal by October 1, 1993.

The interpretive issue raised by two comments suggests that complete deenergization of a faulted transformer is not necessary to achieve the Agency's goal, i.e., to prevent PCB Transformer rupture from a fire-related incident. The argument is that since most PCB Transformers are three-phased with a current-limiting fuse on each phase, and that since most faults are internal faults and limited to one phase, deenergization of the specific faulted phase would achieve the required level of protection against rupture. Thus, these comments maintain that it is not necessary to deenergize the entire transformer.

EPA does not currently have enough information to be certain whether partial deenergization (i.e., of the faulted phase) would suffice in all situations. That is, EPA is not able at this time to state that deenergization of the faulted phase is equivalent (in terms of protection against rupture) to total deenergization of the transformer. EPA suggests that the commentors provide supplementary information so that EPA may resolve this interpretive issue. If EPA finds that deenergization of the faulted phase is equivalent to complete deenergization, EPA will issue an interpretive notice stating so. In the meantime, EPA requires enhanced electrical protection to achieve complete deenergization of a faulted transformer as stated in the July 1985 final rule. EPA has prepared a support document for this rulemaking that responds to those comments that did not result in modification of the rule. This document, entitled "Response to Comments on the Proposed Amendment to the PCB Transformer Fires Proposed Rule, June 1988," is in the public record and is available for review and copying from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays, in Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

For a more detailed discussion of all the issues involved in this rulemaking, see the proposed rule, published at 52 FR 31738, August 21, 1987.

## II. Summary Of The Final Rule

Under section 6(e)(2)(B) of TSCA, EPA can authorize a use of PCBs provided that the use "will not present an unreasonable risk of injury to health or the environment." EPA had determined that the use of PCB Transformers until October 1, 1985 in facilities involved in the handling of food and feed items and the use of all other categories of non-railroad electrical transformers containing or contaminated with PCBs for the remainder of their useful lives would not present an unreasonable risk of injury to health or the environment. However, EPA later determined that PCB Transformer fires (fires involving transformers containing greater than 500 ppm PCB), particularly fires which occur in or near commercial buildings, do pose risks to humans and the environment. EPA determined that the continued use of PCB Transformers without additional regulatory control measures would present an unreasonable risk of injury to health and the environment and thus, in the PCB Transformer Fires Rule, imposed further restrictions and conditions on the use of PCB Transformers.

The PCB Transformer Fires Rule required the marking of the exterior of PCB Transformer locations with the PCB identification label, and prohibited, among other things, the further installation of PCB Transformers (electrical transformers containing 500 ppm or greater PCBs) in or near commercial buildings. The PCB Transformer Fires Rule also placed conditions on the continued use of lower secondary voltage network PCB Transformers in or near commercial buildings by requiring that these transformers be equipped with enhanced electrical protection as of October 1, 1990. Enhanced electrical protection was required by EPA to avoid electrical failures leading to fire-related incidents.

Following promulgation of the PCB Transformer Fires Rule, Mississippi Power filed suit against EPA. In comments submitted in the context of settlement discussion, Mississippi Power asked EPA to consider: (1) Clarifying the current language of the requirements for enhanced electrical protection by substituting the word "rupture" for "failure"; (2) modifying the requirement for enhanced electrical protection of lower secondary voltage network transformers because of space constraints in existing sidewalk vault locations; (3) allowing the installation of PCB Transformers in certain circumstances, such as in emergency situations and for purposes of reclassification; (4) allowing the use of alternative labels in situations where such labeling was voluntarily initiated prior to the effective date of the PCB Transformer Fires Rule; and (5) establishing a specific schedule for bringing mineral oil transformers, which are tested and found to contain 500 ppm or greater PCBs, into compliance with applicable requirements.

After reviewing the new information submitted by Mississippi Power and others, and considering their requests for amendments to the PCB Transformer Fires Rule, EPA determined that the issues raised by Mississippi Power and others warranted further Agency consideration and, therefore, proposed certain amendments to the PCB Transformer Fires Rule. In this document, EPA is amending the regulations that ban the further installation of PCB Transformers in or near commercial buildings and impose certain requirements for enhanced electrical protection, as of October 1, 1990, on lower secondary voltage network PCB Transformers.

EPA is also amending the regulations to allow: (a) The installation of PCB Transformers in emergency situations (when no other non-PCB substitute is available); (b) the installation of retrofilled PCB Transformers for purposes of reclassification; and (c) the use of an alternative label to mark the exterior of certain PCB Transformer locations provided the labeling program meets certain specific requirements. The amendment will also offer owners of lower secondary voltage network PCB Transformers located in or near commercial buildings the option of enhanced electrical protection by October 1, 1990 (as is currently required), or removal by October 1, 1993. Further, EPA is prohibiting the use of lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings as of October 1, 1993.

In the proposed rule, EPA used the term "to register" in connection with notifying fire personnel where PCB Transformers were located. This term was used because legally it means "to record formally and exactly." EPA's enforcement experience with 40 CFR 761.30(a)(1)(vi), however, has demonstrated that some persons have misinterpreted "to register" to allow informal, nonwritten actions in place of a formal written record. To avoid misinterpretation, EPA has made it clear that it interprets this term to mean to inform or notify in writing.

Finally, EPA is amending 40 CFR 761.30(a)(1) (iv) and (v), by deleting the words "failure" and "failures" and substituting the words "rupture" and "ruptures" to avoid ambiguity in the language, and is requiring a specific schedule for bringing mineral oil transformers, found to contain 500 ppm or greater PCBs, into compliance with the applicable regulations.

## III. Discussion Of The Final Rule

### *A. Installation Of PCB Transformers*

The PCB Transformer Fires Rule banned the installation of PCB Transformers in or near commercial buildings after October 1, 1985. In the August 21, 1987 proposed rule, EPA proposed to allow the installation of PCB Transformers in or near commercial buildings in two situations that EPA believes warrant special consideration. The first is in emergency situations, where neither a non-PCB Transformer nor PCB-Contaminated transformer is currently available to replace a failed PCB Transformer, and immediate replacement is necessary to continue electrical service to the entity or entities served by the transformer. The second is for purposes of reclassification, so that a retrofilled transformer may accrue the necessary in-service use time to allow reclassification of the unit. As discussed in the proposed rule (52 FR 31742), EPA believes installation of PCB Transformers for these two uses, under the conditions specified, will not present an unreasonable risk to human health or the environment. These provisions, as modified, are in § 761.30(a)(1)(iii) of the final rule.

In order to ensure consistent treatment to those owners who installed PCB Transformers in emergency situations or for reclassification purposes between October 1, 1985 and September 1, 1988, EPA has added § 761.30(a)(1)(iii)(D) to the final rule. Those owners must notify the appropriate Regional Administrator of such installations within 30 days after the effective date of the rule.

1. *Emergency installation.* In the proposed rule, EPA solicited comments on the availability of non-PCB Transformers for use in emergency situations and the ability of power companies to purchase and receive non-PCB Transformers quickly for use in emergency situations. This information was requested since various electric power companies had indicated replacement non-PCB Transformers were not readily available. EPA received a comment confirming their non-availability; therefore, EPA assumes that non-PCB Transformers or PCB-Contaminated transformers are typically neither readily available for installation nor can they be quickly acquired. The final rule retains the proposed provisions on installation of PCB Transformers in emergency and reclassification situations in § 761.30(a)(1)(iii)(A).

The proposed rule required documentation to support an "Emergency Situation" in accordance with the definition in § 761.3. There was no comment on maintaining documentation. For compliance monitoring purposes, EPA is adding to the final rule the requirement that documentation be completed 30 days after installation and be maintained at the owner's facility. The documentation required to show an "Emergency Situation" is set forth in the final rule in § 761.30(a)(1)(iii)(B)(*1*) (*i*) through (*vi*).

EPA received a comment on the proposed amendment as to whether a PCB Transformer installed in an emergency situation could then be subsequently reclassified to non-PCB or PCB-Contaminated transformer status. EPA's response is that a transformer, originally installed in an emergency situation, can be subsequently reclassified if the reclassification to non-

PCB or PCB-Contaminated status is completed within the 1 year allowed for a transformer originally installed in an emergency situation or by October 1, 1990, whichever is earlier. If the transformer cannot be reclassified in 1 year or by October 1, 1990, whichever is earlier, the transformer must be removed from service since it was originally installed in an "Emergency Situation" as defined in § 761.3. In the final rule, this requirement is in § 761.30(a)(1)(iii)(B)(*3*).

2. *Installation for reclassification purposes.* Although the current regulation prohibits the replacement of a failed PCB Transformer with another PCB Transformer in or near a commercial building, EPA believes that retrofilling and reclassification should be available as a viable option for this equipment. EPA has typically encouraged retrofilling and reclassification and believes that the benefits of reclassification in certain situations approach the benefits of PCB Transformer replacement.

Thus, EPA reconsidered its determination to ban further installation of PCB Transformers as of October 1, 1985 and proposed extending the effective date to allow the installation until October 1, 1990 of retrofilled PCB Transformers so that these units may accrue the necessary in-service use time to allow for reclassification. The final rule requires documentation of the installation of PCB Transformers for reclassification purposes to be maintained on the owner's premises in § 761.30(a)(1)(iii)(C)(*1*) (*i*) through (*iv*).

EPA solicited comments on the time needed to achieve reclassification. EPA received comments that reclassification to a non-PCB or PCB-Contaminated transformer can take as long as 3 years. However, EPA believes that 18 months provide sufficient time to reclassify a retrofilled PCB Transformer to a non-PCB or, at least, a PCB-Contaminated status and added that time period to the final rule in § 761.30(a)(1)(iii)(C)(*2*). EPA believes that the benefits of allowing the use of a PCB Transformer for this very limited time outweigh the potential risks involved. Allowing a retrofilled PCB Transformer to be placed in service for reclassification purposes encourages owners of PCB Transformers to reclassify these units and is consistent with the intent of the rule, which is to phase out gradually the use of PCB Transformers.

Thus, EPA is allowing the installation of retrofilled PCB Transformers until October 1, 1990; however, their in-service time is limited to 18 months after installation or until October 1, 1990, whichever is earlier, to achieve reclassification to a non-PCB or PCB-Contaminated status. Therefore, for practical purposes, a PCB Transformer would have to be installed for reclassification purposes with enough time allowed for it to reach at least the PCB-Contaminated status by October 1, 1990.

EPA has also decided to allow this requirement to apply retroactively to October 1, 1985, for installation of PCB Transformers for emergency and reclassification purposes which has already taken place. Therefore, EPA has provided for these situations in § 761.30(a)(1)(iii)(D) of the final rule. However, those owners who installed PCB Transformers between October 1, 1985, and September 1, 1988, must provide the Regional Administrator, within 30 days after the effective date of this rule, a notice in writing that the PCB Transformer was installed for reclassification purposes. Information to be provided for compliance monitoring purposes includes (1) The date of installation; (2) the type of transformer installed; (3) the PCB concentration, if known, at the time of installation; and (4) the reclassification schedule. These requirements were added in the final rule under § 761.30(a)(1)(iii)(D).

EPA recognizes that there are differences between the installation for reclassification purposes of a retrofilled mineral oil PCB transformer and an "askarel" PCB Transformer. Since installation of a retrofilled mineral oil PCB transformer would not present an unreasonable risk, EPA proposed that a retrofilled mineral oil PCB transformer could be installed indefinitely after October 1, 1990 for reclassification purposes. Its reclassification to a PCB-Contaminated transformer or a non-PCB transformer status would then be determined by testing its PCB concentration 3 months after its installation for reclassification. There were no comments on this proposal and the provisions are retained in § 761.30(a)(1) (iii)(C)(*2*)(*ii*) and (iii)(C)(*2*)(*iii*) of the final rule.

*B. Failure vs. Rupture*

EPA proposed amending the language in § 761.30(a)(1) (iv), (iv)(A), and (v), by deleting the words "failure" and "failures", and substituting the words "rupture" and "ruptures". The preamble explained the need for this change was to avoid ambiguity; the final rule includes the amendment.

*C. Alternative Labeling*

EPA proposed to allow the use of an alternative label (other than that required under the current regulation) for marking PCB Transformer locations—vault doors, machinery room doors, fences, hallways, or means of access, other than grates, and manhole covers. While EPA is interested in a consistent nationwide labeling system, EPA believes that those who voluntarily initiated labeling programs after consultation with local emergency response organizations should not be required to incur the additional expense associated with relabeling. There were no comments on this issue; however, internal EPA review and reevaluation resulted in some minor modifications to the proposal. When EPA proposed to allow the use of alternative marks, the Agency intended to limit this use to situations where a company can demonstrate that a local fire department knows and recognizes the alternative. For purposes of clarity for this rule, EPA intends that recognizing an alternative mark means to be able to identify it and know its meaning. Implicit in recognizing the use of the mark is the necessity that the local fire department has accepted the use of the mark, i.e., taken steps to make personnel aware of the mark by incorporating it into a formal or informal program used to make essential information available to fire department personnel. Thus, EPA is modifying the final rule to require that the company show specifically that the local fire department accepted the use of the mark by incorporating it into its training program. The use of the term "accept" in the final rule does not require any showing that the fire department has approved the mark, only that it has incorporated the use of the mark into its response procedures and training.

Alternative labeling, including the notification provisions, is retained in the final rule in § 761.40. Implicit in the proposed notification to the Regional Administrator was the authority to reject the alternative labeling if it is not substantiated as required. The final rule makes this authority explicit in § 761.40(j)(2)(iv). Also, to facilitate compliance monitoring and enforcement, the final rule requires documentation from the fire department with primary jurisdiction indicating the unit is aware of the alternative mark, accepts its use, and has incorporated it into its training materials. The final rule does require the Regional Administrator either to approve or disapprove in writing the use of an alternative label within 30 days of receipt of the documentation of a program.

*D. Electrical Protection*

EPA proposed to amend the electrical protection requirements on lower

secondary voltage network PCB Transformers. For lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings, EPA proposed requiring the removal of these tranformers by October 1, 1993. (See discussion in Unit III.E. below.) For all other lower secondary voltage network PCB Transformers in or near commercial buildings, the proposed rule offered owners an option to the current requirement for enhanced electrical protection by October 1, 1990. This option is the removal of this equipment by October 1, 1993, provided that EPA is notified of the pending removal by no later than October 1, 1990. In short, EPA proposed to give owners of lower secondary voltage network PCB Transformers located in or near commercial buildings (in other than sidewalk vault locations) the option of implementing risk reduction measures on a shorter schedule, by complying with the current requirement to install enhanced electrical protection by October 1, 1990, or by removing the PCB Transformers by October 1, 1993. As discussed in the proposed rule (52 FR 31743), EPA believes that neither of these options will present an unreasonable risk to human health or the environment. EPA also proposed to require those owners who choose to remove this equipment by October 1, 1993, to register in writing those transformers with the EPA Regional Administrator in the appropriate region by October 1, 1990. This would provide the Regional Administrator with the information needed to facilitate compliance monitoring efforts. There were no comments on this provision and the final rule incorporates it in § 761.30(a)(1)(iv)(C).

*E. Phaseout of Lower Secondary Voltage Network PCB Transformers in Sidewalk Vaults*

Under the current PCB regulations, as of October 1, 1990, EPA prohibits the use of all network PCB Transformers with higher secondary voltages, while requiring enhanced electrical protection on the remaining commercial PCB Transformers, including all radial and lower secondary voltage network PCB Transformer.

EPA proposed requiring that owners of lower secondary voltage network PCB Transformers located in sidewalk vaults near commercial buildings remove those transformers from service by October 1, 1993. In the proposed rule, EPA did not give those owners the option available to owners of lower secondary voltage network PCB Transformers located outside of a sidewalk vault, either to remove these tranformers from service or to install enhanced electrical protection.

While EPA recognizes that allowing the use of this equipment until October 1, 1993 (an additional 3 years), without installing enhanced electrical protection poses some risk, EPA believes that phaseout of an additional class of tranformers above those currently required to be phased out, further minimizes the risk of fire-related events involving PCB Transformers. EPA continues to prefer the regulatory option of transformer removal because it completely eliminates PCB Transformer fire-related risk, as well as the risks posed by leaks and spills of PCBs from these transformers. Thus, although there is some risk in allowing additional time to phase out this equipment, EPA believes the benefits of removing these PCB-containing transformers from service, thus eliminating any potential risk of PCB exposure, outweighs the risks incurred by allowing the use of these tranformers for an additional 3 years. Further, EPA has determined that requiring phaseout of those tranformers in sidewalk vaults would be practical since owners of this equipment express an interest in removing rather than installing enhanced electrical protection and EPA has already determined that for this type of equipment some risk reduction measure must be implemented.

There was no comment on the proposed amendment of the date for removal of these tranformers and the provision remains in the final rule in § 761.30(a)(1)(iv)(B).

*F. Discovery of a PCB Transformer*

EPA proposed that in the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs under § 761.3, is determined through testing to be contaminated at 500 ppm or greater, efforts must be initiated immediately to bring the transformer into compliance in accordance with Part 761. The proposed rule contained a schedule for achieving such compliance and solicited comments on the time frames.

Two comments asked for a clarification regarding compliance with the recordkeeping and reporting requirements, specifically, whether records and reports had to be developed for the transformer while it was assumed to be below 500 ppm. It is not EPA's intention to require owners to develop records retroactively relating to the newly discovered PCB Transformer. EPA is requiring that, after discovering that a mineral oil transformer is a PCB Transformer (and transformer that contains 500 ppm PCB or greater), the owner of the transformer comply with the schedule for bringing the transformer into compliance.

Comments indicated that anywhere from 2 to 15 days would allow ample time to purchase and affix labels to transformers, vault doors, machinery room doors, fences, hallways or other means of access to the PCB Transformer. Therefore, EPA is implementing in the final rule a 7-day period to mark the newly discovered PCB Transformer and transformer locations with the appropriate label, in § 761.30(a)(1)(xv) (B) and (C).

Comments received on the proposed rule agreed with EPA that 30 days was a reasonable amount of time to complete the written registration of the newly discovered PCB Transformer with appropriate fire response personnel and building owners. Therefore, in § 761.3)(a)(1)(xv)(D) the final rule allows 30 days after the transformer is tested and found to contain greater than 500 ppm PCBs to register the transformer.

No other comments were received on the proposed schedule, and the final rule incorporates the other provisions as proposed.

*G. Other Changes*

Three other minor changes were made to the proposed rule for the purpose of clarification. The first is the addition of the definition of "Retrofill" to § 761.3 to make clear that it means the draining and refilling of a transformer. The second is in paragraph (2) of the definition "Emergency Situation" under § 761.3 which has been changed to indicate that immediate replacement must be necessary for continued service to "power users" rather than "utility customers." The third is in § 761.40(j)(3) where paragraph (j)(1) is referenced to indicate clearly the locations where the marking labels must be placed.

Finally, one comment indicated there could be confusion where phase-out of a PCB Transformer is required and reclassification has been achieved. EPA agrees that a PCB Transformer that has been retrofilled and reclassified to PCB-Contaminated or non-PCB status in accordance with the TSCA regulations meets the requirement for phase-out of a PCB Transformer.

## IV. The Record For This Rule

*A. Previous Rulemaking Record*

(1) Official rulemaking record from "Polychlorinated Biphenyls in Electrical Transformers" Final Rule, published in the **Federal Register** of July 17, 1985 (50 FR 29170).

(2) Official Record from "Notice of Interpretation of Transformer Fires Regulations," published in the **Federal Register** of December 31, 1986 (51 FR 47241).

(3) Official Record from "Polychlorinated Biphenyls in Electrical Transformers" Proposed Rule, published in the **Federal Register** of August 21, 1987 (52 FR 31738). FR 31738).

*B. Support Documents*

(4) USEPA, OPTS, EED, Putnam, Hayes and Bartlett, Inc. "Evaluation of the Sufficiency of Current and Projected PCB Disposal Capacity To Meet Demand Requirements," July 1986.

(5) USEPA, EED, "Response to Comments on the Proposed Amendment to the PCB Transformer Fires, Rule," June 1988.

(6) Letters received from:

a. Kansas City Power and Light dated September 11, 1985.

b. Electric Power Board of Chattanooga dated October 3, 1985.

c. UNISON Transformer Services, Inc. dated March 24, 1988.

(7) Correspondence between EPA and the National Bureau of Standards:

a. Letter to Richard W. Bukowski, Center for Fire Research, Fire Science and Engineering Division, National Bureau of Standards, Gaithersburg, Maryland, dated March 29, 1988.

b. Response from Richard W. Bukowski, dated April 18, 1988.

(8) Reports from Resource Planning Corporation submitted to Utility Solid Waste Activities Group, dated January 6, and 8, and April 23, 1986.

(9) Telephone communications between:

a. Joseph Arcoleo of Jersey Central Power and Light Company and Thomas Simons, Office of Toxic Substances, EPA, on November 18, 1987, on the time between installation for reclassification of a PCB Transformer and actual retrofilling.

b. Joseph Willoughby of the General Services Administration and Thomas Simons, Office of Toxic Substances, EPA, on December 15, 1987, on deenergization of PCB Transformers through the use of current-limiting fuses.

10. Communication between Chicago Fire Department and Commonwealth Edison Co.:

a. Letter to H.A. Onishi, Commonwealth Edison Co., from John M. Eversole, Chicago Fire Department, dated February 14, 1984.

b. Letter to Louis T. Galante, Chicago Fire Department, from H.A. Onishi, Commonwealth Edison Co., dated September 23, 1985.

c. Letter to H.A. Onishi, Commonwealth Edison Co., from Thomas D. Roche, Chicago Fire Department.

## V. Regulatory Requirements

*A. Executive Order 12291*

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this amendment to the PCB Rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore is not subject to the requirement that a regulatory impact analysis be prepared.

While the rule places some additional restrictions and conditions on the use of PCB Transformers, it is worth noting that this rule allows the continued use of PCBs in electrical transformers that would otherwise be prohibited by section 6(e) of TSCA. This rule avoids the severe disruption of electric service to the public and industry that would occur if the use of this equipment were immediately prohibited. It also avoids the economic impact that would result from a requirement to replace the equipment as soon as possible.

This rule was submitted to OMB as required by Executive Order 12291. There were no comments from OMB on the rule.

*B. Regulatory Flexibility Act*

Under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

In general this rule reduces the burden on small businesses that would otherwise be encountered if an immediate ban on PCB-containing transformers were to take effect. If an immediate ban on the use of PCBs in transformers were imposed, large costs would be incurred by all producers and users of electricity, including small businesses.

EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

*C. Paperwork Reduction Act*

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal agencies. EPA has determined that the recordkeeping and reporting requirements of this final rule constitute a "collection of information" as defined in 44 U.S.C. 3502(4). The provisions of 40 CFR 761.30 authorize the continued use of electrical equipment under certain circumstances which require recordkeeping and reporting. EPA has clearance to collect information for this authorization under OMB control numbers 2070–0003 and 2070–0073. Under the normal OMB information collection review cycle, 2070–0003 and 2070–0073 are being consolidated, and the notification required in the options allowed under this amendment are included under the consolidated OMB control number 2070–0003 for the use authorization for PCB electrical equipment.

Public reporting burden for this collection of information is estimated to average 188 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

**List of Subjects in 40 CFR Part 761**

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: July 6, 1988.

**Lee M. Thomas,**

*Administrator.*

Therefore 40 CFR Part 761 is amended as follows:

1. The authority citation for Part 761 continues to read as follows:

## PART 761—[AMENDED]

**Authority:** 15 U.S.C. 2605, 2607, 2611; Subpart G also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.3 by adding the definitions of "emergency situation", "mineral oil PCB Transformer", "non-PCB Transformer", and "retrofill" alphabetically to read as follows:

**§ 761.3 Definitions.**

* * * * *

"Emergency Situation" for continuing use of a PCB Transformer exists when:

(1) Neither a non-PCB Transformer nor a PCB-Contaminated transformer is

currently in storage for reuse or readily available (i.e., available within 24 hours) for installation.

(2) Immediate replacement is necessary to continue service to power users.

* * * * *

"Mineral Oil PCB Transformer" means any transformer originally designed to contain mineral oil as the dielectric fluid and which has been tested and found to contain 500 ppm or greater PCBs.

* * * * *

"Non-PCB Transformer" means any transformer that contains less than 50 ppm PCB; except that any transformer that has been converted from a PCB Transformer or a PCB-Contaminated transformer cannot be classified as a non-PCB Transformer until reclassification has occurred, in accordance with the requirements of § 761.30(a)(2)(v).

* * * * *

"Retrofill" means to remove PCB or PCB-contaminated dielectric fluid and to replace it with either PCB, PCB-contaminated, or non-PCB dielectric fluid.

* * * * *

3. In § 761.30 by revising paragraphs (a)(1)(iii), (iv), and (v), by adding paragraph (a)(1)(xv), and by revising the OMB control number to read as follows:

**§ 761.30 Authorizations.**

* * * * *

(a) * * *

(1) * * *

(iii) Except as otherwise provided, as of October 1, 1985, the installation of PCB Transformers, which have been placed into storage for reuse or which have been removed from another location, in or near commercial buildings is prohibited.

(A) The installation of PCB Transformers on or after October 1, 1985, however, and their use thereafter, is permitted either in an emergency situation, as defined in § 761.3, or in situations where the transformer has been retrofilled and is being placed into service in order to qualify for reclassification under paragraph (a)(2)(v) of this section.

(B) Installation of a PCB Transformer in an emergency situation is permitted when done in accordance with the following:

(*1*) Documentation to support the reason for the emergency installation of a PCB Transformer must be maintained at the owner's facility and completed within 30 days after installation of the PCB Transformer. The documentation must include, but is not limited to:

(*i*) The type of transformer, i.e., radial or lower or higher network, that requires replacement.

(*ii*) The type(s) of transformers, i.e., radial or lower or higher network, that must be used for replacement.

(*iii*) The date of transformer failure.

(*iv*) The date of subsequent replacement.

(*v*) The type of transformer, i.e., radial or lower or higher network, installed as a replacement.

(*vi*) A statement describing actions taken to locate a non-PCB or PCB-Contaminated transformer replacement.

(*2*) Such emergency installation is permitted until October 1, 1990, and the use of any PCB Transformer installed on such an emergency basis is permitted for 1 year from the date of installation or until October 1, 1990, whichever is earlier.

(*3*) PCB Transformers installed for emergency purposes may be subsequently reclassified; however, the transformer must be effectively reclassified to a non-PCB or PCB-Contaminated status within 1 year after installation or by October 1, 1990, whichever is earlier because the transformer was initially installed in an emergency situation.

(C) Installation of a retrofilled PCB Transformer for reclassification purposes is permitted when it is done in accordance with the following:

(*1*) Those who installed transformers for reclassification purposes must maintain on the owner's premises, completed within 30 days of installation, the following information:

(*i*) The date of installation.

(*ii*) The type of transformer, i.e., radial or lower or higher network, installed.

(*iii*) The PCB concentration, if known, at the time of installation.

(*iv*) The retrofill and reclassification schedule.

(*2*) For purposes of this paragraph, the installation of retrofilled PCB Transformers for purposes of reclassification under paragraph (a)(2)(v) of this section is permitted until October 1, 1990.

(*i*) However, the use of a retrofilled PCB Transformer installed for reclassification purposes is limited to 18 months after installation or until October 1, 1990, whichever is earlier.

(*ii*) Retrofilled mineral oil PCB Transformers may be installed for reclassification purposes indefinitely after October 1, 1990.

(*iii*) Once a retrofilled transformer has been installed for reclassification purposes, it must be tested 3 months after installation to ascertain the concentration of PCBs. If the PCB concentration is below 50 ppm, the transformer can be reclassified as a non-PCB Transformer. If the PCB concentration is between 50 and 500 ppm, the transformer can be reclassified as a PCB-Contaminated transformer. If the PCB concentration remains at 500 ppm or greater, the entire process must either be repeated until the transformer has been reclassified to a non-PCB or PCB-Contaminated transformer in accordance with paragraph (a)(2)(v) of this section or the transformer must be removed from service.

(D) Owners who installed PCB Transformers in emergency situations or for reclassification purposes between October 1, 1985 and September 1, 1988 must notify the Regional Administrator in writing by October 3, 1988 of such installation. The notification for emergency installation must include the information in paragraph (a)(1)(iii)(B)(*1*)(*i*) through (*vi*) of this section. The notification for reclassification must include the information in paragraph (a)(1)(iii)(C)(*1*)(*i*) through (*iv*) of this section. All PCB Transformers installed in an emergency situation or installed for reclassification purposes are subject to the requirements of this Part 761.

(iv) As of October 1, 1990, all radial PCB Transformers, in use in or near commercial buildings, and lower secondary voltage network PCB Transformers not located in sidewalk vaults in or near commercial buildings (network transformers with secondary voltages below 480 volts) that have not been removed from service as provided in paragraph (a)(1)(v) of this section, must be equipped with electrical protection to avoid transformer ruptures caused by high current faults.

(A) Current-limiting fuses or other equivalent technology must be used to detect sustained high current faults and provide for complete deenergization of the transformer (within several hundredths of a second in the case of radial PCB Transformers and within tenths of a second in the case of lower secondary voltage network PCB Transformers), before transformer rupture occurs. The installation, setting, and maintenance of current-limiting fuses or other equivalent technology to avoid PCB Transformer ruptures from sustained high current faults must be completed in accordance with good engineering practices.

(B) All lower secondary voltage network PCB Transformers not located in sidewalk vaults (network transformers with secondary voltages below 480 volts), in use in or near commercial buildings, which have not been protected as specified in paragraph

(a)(1)(iv)(A) of this section by October 1, 1990, must be removed from service by October 1, 1993.

(C) As of October 1, 1990, owners of lower secondary voltage network PCB Transformers, in use in or near commercial buildings which have not been protected as specified in paragraph (a)(1)(iv)(A) of this section and which are not located in sidewalk vaults, must register in writing those transformers with the EPA Regional Administrator in the appropriate region. The information required to be provided in writing to the Regional Administrator includes:

(*1*) The specific location of the PCB Transformer(s).

(*2*) The address(es) of the building(s) and the physical location of the PCB Transformer(s) on the building site(s).

(*3*) The identification number(s) of the PCB Transformer(s).

(D) As of October 1, 1993, all lower secondary voltage network PCB Transformers located in sidewalk vaults (network transformers with secondary voltages below 480 volts) in use near commercial buildings must be removed from service.

(v) As of October 1, 1990, all radial PCB Transformers with higher secondary voltages (480 volts and above, including 480/277 volt systems) in use in or near commercial buildings must, in addition to the requirements of paragraph (a)(1)(iv)(A) of this section, be equipped with protection to avoid transformer ruptures caused by sustained low current faults.

* * * * *

(xv) In the event a mineral oil transformer, assumed to contain less than 500 ppm of PCBs as provided in § 761.3, is tested and found to be contaminated at 500 ppm or greater PCBs, it will be subject to all the requirements of this Part 761. In addition, efforts must be initiated immediately to bring the transformer into compliance in accordance with the following schedule:

(A) Report fire-related incidents, effective immediately after discovery.

(B) Mark the PCB transformer within 7 days after discovery.

(C) Mark the vault door, machinery room door, fence, hallway or other means of access to the PCB Transformer within 7 days after discovery.

(D) Register the PCB Transformer in writing with fire response personnel with primary jurisdiction and with the building owner, within 30 days of discovery.

(E) Install electrical protective equipment on a radial PCB Transformer and a non-sidewalk vault, lower secondary voltage network PCB Transformer in or near a commercial building within 18 months of discovery or by October 1, 1990, whichever is later.

(F) Remove a non-sidewalk vault, lower secondary voltage network PCB Transformer in or near a commercial building, if electrical protective equipment is not installed, within 18 months of discovery or by October 1, 1993, whichever is later.

(G) Remove a lower secondary voltage network PCB Transformer located in a sidewalk vault in or near a commercial building, within 18 months of discovery or by October 1, 1993, whichever is later.

(H) Retrofill and reclassify a radial PCB Transformer or a lower or higher secondary voltage network PCB Transformer, located in other than a sidewalk vault in or near a commercial building, within 18 months or by October 1, 1990, whichever is later. This is an option in lieu of installing electrical protective equipment on a radial or lower secondary voltage network PCB Transformer located in other than a sidewalk vault or of removing a higher secondary voltage network PCB Transformer or a lower secondary voltage network PCB Transformer, located in a sidewalk vault, from service.

(I) Retrofill and reclassify a lower secondary voltage network PCB Transformer, located in a sidewalk vault, in or near a commercial building within 18 months or by October 1, 1993, whichever is later. This is an option in lieu of installing electrical protective equipment or removing the transformer from service.

(J) Retrofill and reclassify a higher secondary voltage network PCB Transformer, located in a sidewalk vault, in or near a commercial building within 18 months or by October 1, 1990, whichever is later. This is an option in lieu of other requirements.

* * * * *

(Approved by the Office of Management and Budget under control number 2070–0003; the recordkeeping requirements of paragraph (a)(1)(xii) were approved by the Office of Management and Budget under control number 2070–0007)

4. In § 761.40 by revising paragraph (j) to read as follows:

**§ 761.40 Marking requirements.**

* * * * *

(j) PCB Transformer locations shall be marked as follows:

(1) Except as provided in paragraph (j)(2) of this section, as of December 1, 1985, the vault door, machinery room door, fence, hallway, or means of access, other than grates and manhole covers, to a PCB Transformer must be marked with the mark $M_L$ as required by paragraph (a) of this section.

(2) A mark other than the $M_L$ mark may be used provided all of the following conditions are met:

(i) The program using such an alternative mark was initiated prior to August 15, 1985, and can be substantiated with documentation.

(ii) Prior to August 15, 1985, coordination between the transformer owner and the primary fire department occurred, and the primary fire department knows, accepts, and recognizes what the alternative mark means, and that this can be substantiated with documentation.

(iii) The EPA Regional Administrator in the appropriate region is informed in writing of the use of the alternative mark by October 3, 1988 and is provided with documentation that the program began before August 15, 1985, and documentation that demonstrates that prior to that date the primary fire department knew, accepted and recognized the meaning of the mark, and included this information in firefighting training.

(iv) The Regional Administrator will either approve or disapprove in writing the use of an alternative mark within 30 days of receipt of the documentation of a program.

(3) Any mark placed in accordance with the requirements of this section must be placed in the locations described in paragraph (j)(1) of this section and in a manner that can be easily read by emergency response personnel fighting a fire involving this equipment.

[FR Doc. 88–16194 Filed 7–18–88; 8:45 am]
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July 19, 1988

Part VII

# Department of Energy

**Final Decision on Inclusion of a Private Property Near Naturita, CO, for Remedial Action Under the Uranium Mill Tailings Radiation Control Act of 1978; Notice**

## DEPARTMENT OF ENERGY

### Final Decision on Inclusion of a Private Property Near Naturita, CO, for Remedial Action Under the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604)

**AGENCY:** Department of Energy.

**ACTION:** Program Information Notice: Final decision on inclusion of a private property near Naturita, Colorado, for remedial action under Section 101 of Pub. L. 95-604, the "Uranium Mill Tailings Radiation Control Act of 1978," enacted on November 8, 1978.

**SUMMARY:** The "Uranium Mill Tailings Radiation Control Act of 1978" (UMTRCA or the Act) authorized the Department of Energy (DOE or the Department) to conduct, in cooperation with interested states, Indian Tribes, and persons who own or control certain inactive mill tailings sites, a program of assessment and remedial action to stabilize and control the tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards at these sites and at nearby vicinity properties.

The DOE has been requested by the Hecla Mining Company (Hecla) to include Hecla's "Durita" property as a designated property for the purposes of remedial action under the Act. The "Durita" property is located approximately nine miles west of Naturita off Colorado Highway 90S.

On April 28, 1988, DOE published a notice in the **Federal Register** in which it proposed not to include the "Durita" property as either a production site or vicinity property for the purposes of remedial action under the Act. 53 FR 15273. The purpose of the notice was to solicit comments on DOE's proposed decision. Accordingly, comments were received from the State of Colorado (letter from the Office of the Attorney General, dated June 16, 1988, hereafter State Comments) and the Hecla Mining Company (Comments and Objections of Hecla Mining Company by Davis, Graham & Stubbs, Denver, Colorado, dated June 3, 1988, hereafter Hecla Comments). As set forth below, after considering the comments, the Department has decided that the "Durita" property is not a proper candidate for inclusion in the remedial action program under UMTRCA.

#### Background

The "Uranium Mill Tailings Radiation Control Act of 1978," Pub. L. 95-604, 42 U.S.C. 7901, *et seq.*, establishes a program to provide for the stabilization, disposal, and control of uranium mill tailings in a safe and environmentally sound manner. Under Title I of the Act, the DOE is authorized to conduct remedial actions at certain inactive processing sites.

Section 101(6) of the Act defines two types of "processing sites." The first is an inactive "production site" defined as:

> (A) any site, including the mill containing residual radiocative materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, * * * unless (i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or (ii) a license (issued by the [Nuclear Regulatory] Commission or its predecessor agency under the Atomic Energy Act of 1954 or by a State as permitted under section 274 of such Act) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date.

The second type is a "vicinity property" defined as: "(B) any other real property or improvement thereon which—(i) is in the vicinity of such [production] site, and (ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Section 101(7) of the Act defines the term "residual radioactive material" to mean:

> (A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constitutents of the ores, and (B) other waste (which the Secretary determines to be radioactive) at a processing site which relate (sic) to such processing, including any residual stock of unprocessed ores or low-grade materials.

Furthermore, section 101(8) of the Act defines "tailings" to mean:

> The remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

#### Discussion

Before the passage of UMTRCA on November 8, 1978, Ranchers Exploration & Development Corporation (Ranchers), the predecessor-in-interest to the Hecla Mining Company, owned and controlled a quantity of uranium mill tailings at a site known as "Naturita," a previously active mill site also near Naturita, Colorado. Ranchers possessed the tailings under license Colo. 317-01S, issued on November 12, 1976, by the State of Colorado. On June 9, 1977, a new state license, Colo. 317-02S, was issued superseding the previous license and permitting Ranchers to "transport and process" uranium mill tailings. Amendments 1 (October 26, 1977), 2 (December 12, 1977), and 3 (May 4, 1978) modify the license to authorize the excavation and transportation of uranium mill tailings from the old Naturita mill site to the new "Durita" processing site for the "production of natural uranium concentrate by leaching of uranium mill tailings."

It is the Department's view that the "Durita" site was operating as an active mill site under a valid state production license at the time UMTRCA was enacted, and that the site does not fit within the definition of an inactive "production site" under section 101(6)(A) of the Act as a site appropriate for remedial action because the uranium produced there was not produced for sale to any Federal agency prior to January 1, 1971.

Furthermore, with respect to such "[a]ctive operations" at the time of the Act's passage, Congress in section 115(a) has prohibited expenditures with respect to any site licensed by a state at which production of any uranium product takes place. It was Congress' intent that remedial action at licensed active mill sites be taken by the license holder pursuant to the license requirements under the supervision of the regulating agency, and not be taken under UMTRCA at taxpayer expense.

In addition, because "Durita" was a licensed active mill site, it does not fit within the definition of a vicinity property under section 101(6)(B). Any remaining materials at the "Durita" mill site are "derived" from the active production operation itself rather than from the inactive Naturita mill site. Once the uranium mill tailings were excavated and transported from the Naturita mill site to "Durita" for processing, they lost their characteristic as "residual radioactive materials." As set out above, that term means "waste in the form of tailings." Although the materials taken from the Naturita mill site to the "Durita" mill site were tailings, they were not "waste," since they were transported as a valuable industrial product for use in a profit making venture, i.e., the production of uranium for sale as yellow cake to private industry. Indeed, in 1978 and 1979, Ranchers had revenues of $8,841,737 and $12,491,067, respectively, from the leaching of uranium mill tailings. The inclusion of "Durita" as a vicinity property would thus seem contrary to Congress' intent that such vicinity properties not have been active mill sites themselves at the time of UMTRCA's passage.

Even assuming that the materials at the "Durita" mill site qualify as residual radioactive material derived from the Naturita site which Ranchers was

processing under license Colo. 317–02S for sale to a Federal agency, the site would still not be appropriate for designation. Section 101(6)(A)(ii) precludes designation where a license, issued by a state for the production of any uranium product from ores, is in effect on January 1, 1978. However, in the stipulation following section 101(6)(B)(ii) and pursuant to the procedures established in section 108(b), an exemption is provided where a license is issued for the reprocessing of residual radioactive materials (mill tailings) at a designated site. In this case, the uranium production at the "Durita" mill site using mill tailings from the Naturita site was undertaken prior to the designation of Naturita as a "processing site." Moreover, since neither Ranchers nor Hecla took any action to meet the requirements of section 108(b) after Naturita's designation, in the Department's view the exception would not apply.

DOE has given full and deliberative consideration to comments and objections to its Proposed Decision, and our responses to specific comments are set out below. These comments were instrumental in DOE's formulation of a final decision regarding whether to include the "Durita" property in the UMTRCA remedial action program. Accordingly, DOE has determined that the "Durita" property is neither a production site nor a vicinity property within the definition of a processing site under UMTRCA, and therefore is not appropriate for remedial action under the Act.

**Response To Comments**

In its comments and objections to DOE's proposed decision, Hecla responds:

> [DOE's] rationale miscontrues the basic intent of Congress in enacting UMTRCA. Congress clearly directed DOE to perform remedial action on "residual radioactive material" (i.e., uranium tailings) that had been generated as a result of federally-induced uranium production programs in the period before 1971."

Hecla Comments, page 4.

Hecla asserts that relocating and reporcessing tailings from another site, one which qualifies for remedial action, should not change the government's obligation to perform remedial action at the new site, i.e., the Durita site. *Id.* at 5.

These comments exemplify the value of the notice and comment procedure adopted by DOE in this instance, because they succinctly identify the source of Hecla's basic misunderstanding of the statute authorizing DOE to take remedial action. Contrary to Hecla's belief, Congress did not direct DOE simply to perform remedial action on "residual radioactive material", but to perform remedial action *at qualified sites.* Indeed, the Act instructs the Secretary to designate "processing sites within the United States which he determines requires (sic) remedial action to carry out the purposes of [Title I]." 42 U.S.C. 7901(b)(1) and 7912(a)(1). This determination is to be made against certain criteria set out in the Act. In the present case, the Secretary has determined that the designation of the Durita site would not carry out the purposes of the Act. In general, it is the Department's position that UMTRCA's purpose is to cleanup *sites* contaminated as a result of the production of uranium sold to the government. Durita is not such a site. Contrary to what appears to be Hecla's understanding, UMTRCA does not encompass the cleanup of all residual radioactive material at any location irrespective of the reasons the material came to be present at such location.

One of the criteria established in Title I for designating a site is that the candidate processing site be one "at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971, under a contract with any Federal agency." 42 U.S.C. 7911(6)(A). The Durita property was not such a site since neither Hecla nor its predecessor produced uranium there for sale to a Federal agency before 1971. Indeed, the Durita property was only utilized to produce uranium to private industry after 1971. DOE's reading of the Act is consistent with the legislative history. For example, the House Committee on Interior and Insular Affairs, in discussing the characteristics of the sites deemed appropriate for remedial action under UMTRCA, stated that "[a]ll of them consist of tailings resulting from operations under Federal contracts," and that "the Secretary of Energy need not designate any sites to be included in the authorized program which are currently under active license, or which contain tailings from commercial production, unless it can be shown that the tailings hazard could in no way be remedied without such designation." H.R. Rep. No. 95–1480(I), August 11, 1978, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7433, 7434–36.

Based on this analysis, it is the Department's view that once Hecla relocated and reprocessed the tailings from the Naturita site, it created a new site, one which does not meet the basic requirement of the Act, i.e., that a site qualified for remedial action under UMTRCA be one at which uranium was produced for sale to a federal agency prior to January 1, 1971.

Hecla submitted a number of comments addressing the "licensed site exemption." Hecla Comments, pp. 5–9. This exemption is a proviso in section 101(6)(A)(ii). It forecloses designation of a site containing residual radioactive materials which is licensed by the Nuclear Regulatory Commission (NRC) or an agreement state on or after January 1, 1978. Durita is such a site, and DOE set out this exemption as an additional basis on which Durita would not qualify for remedial action.

First, Hecla submits that section 115's prohibition on the expenditure of UMTRCA funds on licensed sites does not apply to uranium production from residual radioactive materials. This miscontrues the statute. While section 115, on its face, appears to provide an exception for residual radioactive materials, a reading of this section in light of section 101(6) and the purpose of the statute leads DOE to conclude that Congress' intent was that the only active licensed sites containing residual radioactive material that are appropriate for remediation are ones complying with the provisions of section 108(b). This conclusion follows from a reading of the last sentence of section 101(6): "A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 108(b)." Hecla did not comply with the stipulations contained in section 108(b) for its Durita remilling operation.

Hecla also states that "Congress logically concluded that activities involving reprocessing of uranium tailings should not trigger the 'licensed site' exemption, because such reprocessing neither increases the government's cleanup burden nor alters the fact that the tailings meet Title I criteria." Hecla Comments, p. 6. This view ignores that Hecla has created an entirely new site at Durita which it has contaminated with radioactive materials, and which did not operate to produce uranium for any federal agency. Taken to its logical end, Hecla would have DOE, at taxpayer expense, cleanup after it in the wake of Hecla's industrial ventures at whatever sites it chooses to operate from. We do not believe the Act authorizes this.

Hecla further argues that the Durita site does not meet the licensed site exemption since its license was not issued pursuant to Section 274 of the Atomic Energy Act (AEA) because the

NRC did not have authority to delegate licensing of byproduct material to the States. Hecla Comments at p. 7. This argument fails to recognize the interrelation of the AEA and UMTRCA. Statutorily, a license within this particular exemption must be issued by the appropriate federal agency or by a State "*as permitted* under section 274 of the Act [42 USCS 2021]." 42 USCS 7911(6)(A)(1) (emphasis added). While the NRC did not have licensing authority over byproduct material until 1981, a State may have entered into an agreement with respect to byproduct material prior to 1981 "*as permitted* under section 274 of the Atomic Energy Act of 1954". 42 USCS 2021(h)(1), (2) (emphasis added). *See also,* 10 CFR 150.31(a). Thus, it is our position that Hecla's license with the State of Colorado was issued *"as permitted"* under section 274 of the AEA. In any event, Hecla's argument here is specious. The licensed site exemption only applies with respect to sites containing residual radioactive materials at which uranium was produced for sale to a federal agency prior to 1971. Durita, as noted earlier, is not such a site.

Hecla also disagrees that the prohibition of section 101(6)(A)(ii) applies to "tailings", since the word used in that exemption is "ores". *Id.*, p. 7. The Department has determined that the word ores should be read to encompass tailings which are reprocessed to extract their uranium value. This is consistent with one definition of ores: "a source from which a valuable matter is extracted." Webster's Ninth New Collegiate Dictionary at 831 (1983). This is also consistent with the stipulation following section 101(6)(B)(ii) which, the Department believes, allows the Secretary to treat a license for the production of uranium from residual radioactive material, including tailings, as a license for the production of uranium from ores.

Finally, Hecla asserts that the final sentence of section 108(b) "creates an uncertainty as to whether issuance of such a license to satisfy section 108(b) would alter the Title I status of a given site," and that the final sentence of section 101(6) clarifies that "such licenses would not alter that site's Title I status." *Id.*, p. 8. We agree that the final sentence of section 101(6) makes clear that remilling pursuant to section 108(b) would not fall within the licensed site exemption. But Hecla's private remilling operation was not conducted or licensed pursuant to section 108(b), and the Act is silent as to these other types of licensed operations. Hecla argues that this silence does not imply that "any post-UMTRCA reprocessing of residual radioactive material which is not in accordance with section 108(b) automatically triggers the definitional exception in section 101(6)(A)(ii)." Hecla Comments, p. 8. No support for this statement is put forward, and the Department is aware of none. As discussed above, it is the Department's view that the licensed site exemption would apply to an operation such as Hecla's remilling at Durita. However, the exemption could not arise in any event since it only applies to sites at which uranium was produced for sale to a federal agency. It is undisputed that this was not the case with Durita's uranium reprocessing operation.

It is Hecla's position that its Durita site further qualifies as a vicinity property under UMTRCA. It states that "reprocessing of the tailings did not change their basic physical characteristic as Title I material." Hecla Comments, p. 9. This again points up Hecla's basic misunderstanding of the Act. The residual radioactive material at Naturita derived its "characteristic as Title I material" because of its presence at a Title I designated production site, not simply because the material itself was "Title I." Thus, it is a site qualified for designation under UMTRCA which defines the material, not vice versa. An otherwise non-qualifying and active licensed production site cannot qualify for remedial action under UMTRCA simply because its uranium resource base is material from a Title I inactive production site.

Hecla seeks to qualify its Durita production site as a vicinity property by asserting that its use of residual radioactive material for the extraction of uranium is no different than other private users of tailings in building materials, fill material and other profit-making ways. *Id.*, p. 10. But these other uses utilized the tailings as a waste product suited to those particular activities, i.e., generally foundation material. Hecla, on the other hand, utilized the tailings for their inherent commercial value as a uranium resource for its remilling business. The former uses were unregulated and unlicensed because the material was generally thought to be harmless. Hecla's operation, on the other hand, was regulated by the State, and it required a license under which Hecla is to take remedial action, action which Congress said should not be taken under UMTRCA. H.R. Rep. 95-1480(I), *supra.* It is not tenable, in the view of DOE, to assert that these situations are the same. Indeed, Congress, in describing the characteristics of vicinity properties, referred to "structures and buildings located in the vicinity of such site which are contaminated with residual radioactive materials derived from such site." House Report No. 95-1480 (II), September 30, 1978, *reprinted in* 1978 U.S. Code Cong. & Ad. News 7462. The Durita property is not such a structure or building.

The State of Colorado, after reviewing the Notice of Proposed Decision, states that "we are in agreement with the proposed decision to exclude the Durita property from remedial action under UMTRCA for the reasons stated in the Notice." State Comments.

No other comments were received.

**FOR FURTHER INFORMATION CONTACT:** Mr. W. John Arthur III, Acting Project Manager, Uranium Mill Tailings Project Office, U.S. Department of Energy, 5301 Central Avenue NE, Suite 1720, Albuquerque, New Mexico, 87108, telephone: (505) 844-3941, or Ms. Sally Mann, Director, Division of Uranium Mill Tailings Projects, Office of Nuclear Energy, U.S. Department of Energy, Mail Stop NE-22, Washington, DC 20545, telephone: (301) 353-2585.

Issued in Washington, DC, July 13, 1988.

**John E. Baublitz,**

*Acting Director, Office of Remedial Action and Waste Technology, Office of Nuclear Energy.*

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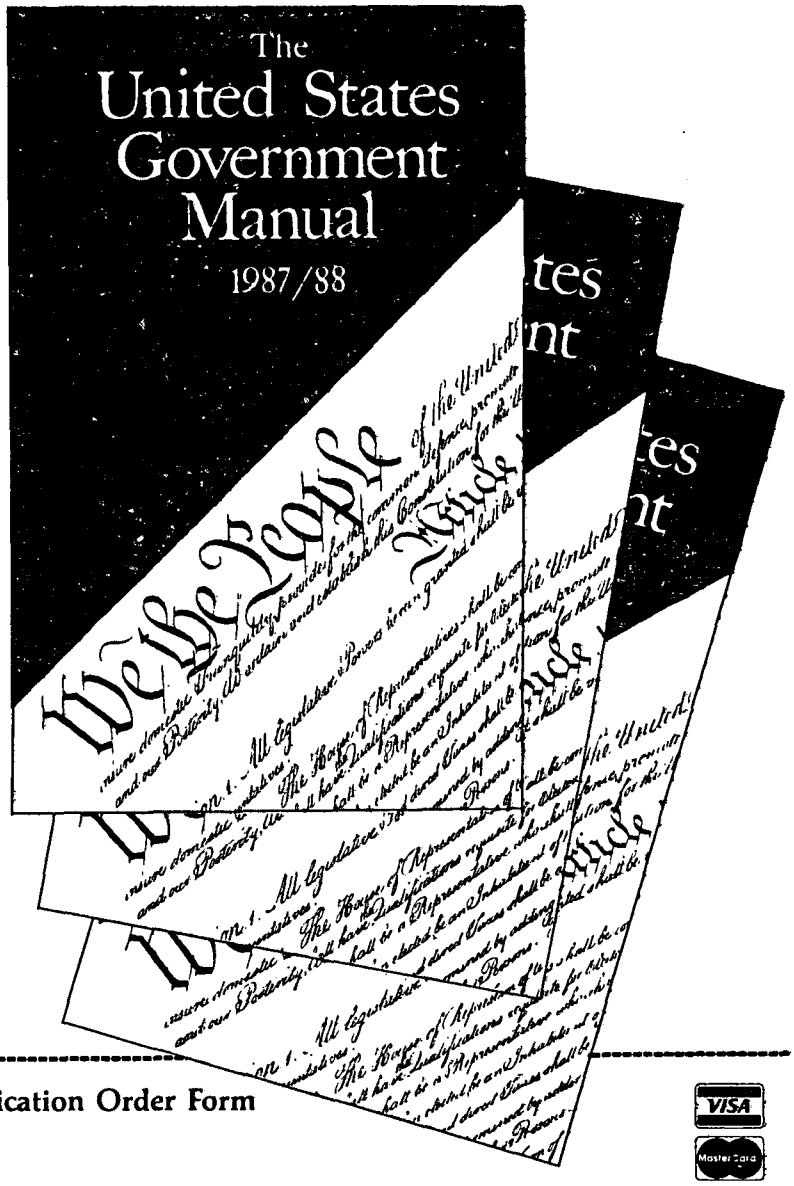


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